I. COMMITTEE RECOMMENDATION

The Committee of the Whole reports favorably on Bill 21-120, the “Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2016,” and adopts the report on this measure as approved by the Committee of the Whole Subcommittee on Workforce. The Committee revises the Print on this measure as approved by the Subcommittee on Workforce, and recommends adoption of Bill 21-120, as amended, by the Council.

II. COMMITTEE REASONING AND SECTION-BY-SECTION ANALYSIS

The Committee of the Whole makes the following substantive amendments to the Subcommittee on Workforce Print to Bill 21-120.

Section 2: Subsection (g)(2)(D) is amended to clarify that statutory penalties for when an employer admits a violation of this act are discretionary and not mandatory. Furthermore, the subsection is amended to require an employer, who admits a violation of this act, to pay liquidated damages equal to the amount of unpaid wages, reasonable attorney fees and costs, and other appropriate relief. As proposed in the Subcommittee Print, an employer would have had to pay liquidated damages equal to treble the amount of unpaid wages, reasonable attorney fees and costs, and other appropriate relief. These two changes will increase administrative efficiency by encouraging prompt settlement of these cases. If the penalties for employers who admit wage theft
violations are excessive it would prolong these cases by incentivizing the employer to contest the allegations in court or through a contested administrative hearing.

Section 4: A new subsection (c) is added that amends section 105.3 of Title 12A of the District of Columbia Municipal Regulations to require a permit application to include the name and contact information of a subcontractor working on a construction project. This information is required to be updated as it becomes known, recognizing that subcontractors may be hired, or changed, after permits are issued. Currently, only the name and contact information of the general contractor or construction manager is required on a permit application. This amendment will ensure that workers on construction sites know who their employers are and can therefore bring a complaint against the specific employer for violations of the law.

III. COMMITTEE ACTION

On November 15, 2016, the Committee met to consider Bill 21-120, the “Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2016.” The meeting was called to order at 12:12 p.m., and Bill 21-120 was item VII-L on the agenda. After ascertaining a quorum (Chairman Mendelson and Councilmembers Alexander, Allen, Bonds, Cheh, Evans, Grosso, May, McDuffie, Nadeau, Silverman, Todd, and White present), Chairman Mendelson moved the print with leave for staff to make technical and conforming changes. Councilmember Silverman offered an amendment to reduce the amount of liquidated damages an employer must pay if they admit a violation of this act. Without objection, the amendment was accepted. Then Councilmember Nadeau spoke in favor of the provision of the bill that would require a permit application to include the information of the subcontractors that are working on a project. After an opportunity for further discussion, the vote on the print was unanimous (Chairman Mendelson and Councilmembers Alexander, Allen, Bonds, Cheh, Evans, Grosso, May, McDuffie, Nadeau, Silverman, Todd, and White voting aye). Chairman Mendelson then moved the report with leave for staff to make technical, conforming, and editorial changes. After an opportunity for discussion, the vote on the report was unanimous (Chairman Mendelson and Councilmembers Alexander, Allen, Bonds, Cheh, Evans, Grosso, May, McDuffie, Nadeau, Silverman, Todd, and White voting aye). The meeting adjourned at 2:25 p.m.

IV. ATTACHMENTS

1. Subcommittee Report and Print for Bill 21-120 without attachments.
2. Committee Print for Bill 21-120.
COUNCIL OF THE DISTRICT OF COLUMBIA
SUBCOMMITTEE ON WORKFORCE
SUBCOMMITTEE REPORT
1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: All Councilmembers

FROM: Councilmember Silverman
Chairperson, Subcommittee on Workforce

DATE: November 7, 2016

SUBJECT: Report on Bill 21-120, the “Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2016”

The Subcommittee on Workforce, to which Bill 21-120, the “Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2016” was referred, reports favorably thereon with amendments, and recommends its approval by the Council.

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I. BACKGROUND AND NEED

On March 3, 2015, Bill 21-120, the “Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2016” was introduced by Councilmembers Silverman, Nadeau, Allen, Bonds, and Chairman Mendelson. On October 26, 2016, the Subcommittee on Workforce held a public hearing on the bill.

As introduced, Bill 21-120 would build on and clarify provisions of the Wage Theft Prevention Amendment Act of 2014 and addresses on a permanent basis the issues covered in several emergency and temporary clarification acts passed by the Council. Among other topics, the bill will authorize the Mayor to issue regulations, set maximum penalty levels per affected employee, clarify how employers receive and provide notice under the act including in languages other than English, expand access to protections under DC law to parking lot attendants denied federally-mandated overtime pay, and clarify who may bring wage theft actions act and what remedies and processes are used.
Background

The term “wage theft” covers a variety of infractions that occur when workers are deprived their legally or contractually promised wages. It can occur in any industry but is especially prevalent in construction, restaurants, security, cleaning, and domestic work. Common forms of wage theft are nonpayment of part or all of a worker’s regular wages, overtime, or other earned compensation, holding back final paychecks after a worker leaves a job, issuing paychecks that bounce, misclassifying workers as independent contractors, forcing workers to work off the clock, and tip stealing.

The effects of wage theft on workers and their families can be devastating, especially for low-wage workers. Low-wage workers who are victims of wage theft still have to pay rent, feed themselves and their family, and pay for childcare or education costs. For any worker that is living paycheck to paycheck, wage theft can result in high costs such as fees for missed payments, high-interest loans, evictions, foreclosures, and repossessions. Additionally, workers who suffer wage theft therefore have less money to save for future expenses. According to the most comprehensive study of wage theft in American cities to date, “more than two-thirds (68 percent) of [low-wage workers in] the sample experienced at least one pay-related violation in the previous work week. The average worker lost $51, out of average weekly earnings of $339. Assuming a full-time, full-year work schedule, we estimate that these workers lost an average of $2,634 annually due to workplace violations, out of total earnings of $17,616. That translates into wage theft of 15 percent of earnings.”¹ The report also noted that many workers do not report wage theft because they do not know the law, think they lack the necessary evidence, or fear retaliation and that, of those who did complain, 43 percent in fact did face retaliation.

Beyond causing individual workers to suffer economic losses, wage theft also impacts the economy as a whole. Underpaying or stealing wages from workers lowers tax revenues, which can depress consumer spending and stunt economic growth because less disposable income translates into less money spent at local businesses. In addition, ethical employers who abide by federal and state wage and hour laws are at a competitive disadvantage, as they have higher labor costs than their competitors. Dishonest employers also harm other taxpayers when they do not pay their fair share of payroll and unemployment taxes.

The Wage Theft Prevention Amendment Act of 2014

The Wage Theft Prevention Amendment Act of 2014 changed the District’s policies to encourage transparency and communication in the workplace, increase protections against wage theft and retaliation, improve administrative processes, and increase the impact of litigation to cover individual and group claims. The 2014 Act increased the penalties for employers who commit wage and hour violations; provided anti-retaliation protection for workers who hold employers accountable for failing to pay wages owed; established a formal hearing process with

enforceable judgments; provided for better access to legal representation for wage theft victims; and made it easier for workers to collect awards from businesses that steal their wages. The 2014 Act also required employers to provide a written notice to employees – upon hiring and after any changes in the terms of their employment – of the expected pay rate, method of calculation, and the pay period so that both parties know and agree to the expectations upfront. This documentation can later be used to substantiate or disprove wage thefts claims. The Act also improved the process for workers by giving them the right to a formal hearing before an administrative law judge within 60 days and increasing access to legal representation through adoption of a set standard for determining attorney fees owed to wage theft plaintiffs.

Committee Reasoning

After listening to all the testimony at the Public Hearing, the Subcommittee recommends the approval of the Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015, with amendments. The Subcommittee recognizes the tremendous bravery of those who came forward to testify and share their personal experience with wage theft. Numerous community groups, businesses, and individuals have also dedicated their time and input. The Subcommittee is grateful to all of these individuals for this great service to the District of Columbia. The Subcommittee believes that changes proposed through this Act will improve the District’s employment practices and clarify several aspects of the 2014 Act that have proven ambiguous.

I. Emergency/Temporary Provisions Already Passed by the D.C Council

The Subcommittee Print includes permanent provisions comparable to those in emergency and temporary acts already passed unanimously by the D.C. Council. These sections will:

1. Authorize the Mayor to issue regulations implementing the Wage Payment Act

Bill 21-120 would make permanent the clarification that the Mayor has authority to issue rules interpreting and implementing the Wage Payment Act.

2. Repeal a retroactive applicability date for Wage Theft Prevention Act of 2014

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2 The first such act was the Wage Theft Prevention Correction and Clarification Emergency Amendment Act of 2014 (B20-1012). Its successor acts included the Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2014 (B20-1013), the Wage Theft Prevention Correction and Clarification Emergency Amendment Act of 2015 (B21-433), the Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2015 (B21-434), the Wage Theft Prevention Correction and Clarification Congressional Review Emergency Amendment Act of 2016 (B21-568), the Wage Theft Prevention Correction and Clarification Emergency Amendment Act of 2016 (B21-844), the Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2016 (B21-845). The second such act was the Wage Theft Prevention Clarification Emergency Amendment Act of 2015 (B21-52). Its successor acts included the Wage Theft Prevention Clarification Temporary Amendment Act of 2015 (B21-53), the Wage Theft Prevention Clarification Congressional Review Emergency Amendment Act of 2015 (B21-188), the Wage Theft Prevention Clarification Emergency Amendment Act of 2016 (B21-561), the Wage Theft Prevention Clarification Temporary Amendment Act of 2016 (B21-562), the Wage Theft Prevention Clarification Congressional Review Emergency Amendment Act of 2016 (B21-698), and the Revised Wage Theft Prevention Clarification Emergency Amendment Act of 2016 (B21-928).
The Wage Theft Prevention Amendment Act of 2014 originally stated it would be applicable October 1, 2014. However, because that law did not finish the congressional review period Act until February 26, 2015, this applicability date was inadvertently retroactive, which raises constitutional concerns with respect to the law’s criminal penalties. This provision was repealed via temporary legislation and the Subcommittee Print would make that repeal permanent.

3. **Replace minimum criminal penalties with maximum criminal penalties**

The Wage Theft Prevention Amendment Act of 2014 included minimum criminal penalties based on the amount of wages stolen. This interfered with prosecutorial discretion. The temporary legislation replaced the minimum penalties with maximum penalties. Bill 21-120 would make those changes permanent, while also achieving greater consistency in penalties being assessed on a per affected employee basis. The penalties were also adjusted to ensure that the District’s Attorney General maintains responsibility for deterring criminal wage theft violations.

4. **Allow employers to pay professional, administrative, and executive employees once per month and to not record precise time worked for those employees**

Some employers of professional, administrative, and executive employees who are paid on a salaried rather than hourly basis were accustomed to paying their employees on a monthly basis, rather than twice a month, and not tracking the precise times worked by their employees. Although District law prior to the Wage Theft Prevention Amendment Act of 2014 already required that employers track the “hours worked each day and each workweek by each employee,” the 2014 law’s amendment requiring that instead the “precise time worked each day” be recorded was viewed as overly burdensome by these employers. The Subcommittee agrees that the burden of making and preserving these records is only warranted for employees who are compensated on an hourly basis as well as those who are not bona fide “professional, administrative, and executive” employees who are not legally entitled to overtime compensation. Consequently, the Subcommittee Print would make this exemption from the temporary legislation permanent, while emphasizing that the exemption applies only to employees who are not compensated on an hourly basis.

5. **Require the Mayor to translate sample templates for employers to give employees into the languages covered by the Language Access Act**

Bill 21-120 would make permanent the requirement contained in the temporary legislation that required the Mayor to translate notices and sample templates for employers to give to their employees into all of the languages required by the District’s Language Access Act. The Subcommittee believes that these translations should be published online on the Department of Employment Services’ (DOES) website and that translations should be provided in Amharic, French, Korean, Mandarin, Spanish, and Vietnamese because there are more than 500 employees in the District who speak each of those languages as their primary language and need to know their rights and have written records of the terms of their employment in order to deter wage theft. The Subcommittee does not agree that translations only need to be provided in languages used by large numbers of DOES’s existing customer base, either because the lack of translations itself may
contribute to employees not seeking DOES's assistance because they do not know their rights or do not know that DOES could offer such assistance. The Subcommittee Print would also make permanent a protection for employers in cases where DOES has not provided a translation into a language an employee requires, making it all the more important for DOES to provide translations in multiple languages. To dispel any doubt related to DOES's ability to translate these documents into more languages, the Subcommittee Print authorizes the Mayor to translate the documents into additional languages as the Mayor determines is appropriate. As requested in DOES's testimony, the Subcommittee Print's continues to describe the "sample template" produced by the DOES as a "sample template" rather than requiring the agency to produce a "form" that employers must use without supplementation.

II. Additional Provisions Included in Bill 21-120 as Introduced

As introduced, Bill 21-120 included several additional provisions not included in the emergency and temporary legislation passed by the Council. These provisions would:

1. Clarify that the Attorney General can enforce wage and leave laws

Several public witnesses testified that the OAG can and should play a critical role in helping to enforce wage theft laws, particularly against egregious bad actors and repeat violators of multiple wage and hour and paid leave statutes. When the Wage Theft Prevention Amendment Act of 2014 was passed, several provisions implied the Mayor to enforce wage and leave laws in court, a task that historically the Mayor had delegated to the Attorney General. At that time, the Attorney General was appointed by the Mayor and so could perform these duties as a delegate of the Mayor without being specifically being named in the statute. Since the Attorney General is now an elected office and independent of the Mayor, the Subcommittee Print amends this language to refer directly to the Attorney General as the party enforcing these laws in court on behalf of the District and adds the Attorney General to the list of offices with subpoena authority and access to business records on behalf of the District, subject to limitations to protect due process for businesses.

The Wage Theft Prevention Amendment Act of 2014 also struck language authorizing claimants to assign their claims to the District so that the Attorney General could enforce their claims on their behalf in court. Advocates at the time expressed a concern that this assignment process took control away from claimants, so they were no longer able to determine whether and for how much to settle their claims. In addition, because the 2014 law created a more formal process for DOES to make administrative determinations, it seemed inappropriate for an agency to take assignment and an obligation to act on behalf of a claimant and then for that same agency to adjudicate the claimant's case. As the D.C. Chamber of Commerce testified, giving the Mayor authority to participate on behalf of employees "while with the other hand making determinations at DOES about claims... seems inappropriate, and unnecessary."

Instead, the Subcommittee Print adopts the approach of clarifying the OAG's standing to pursue wage and leave cases in court directly, without requiring assignment from, or prejudicing the interests of, individual employees. This allows the OAG to act to deter wage theft, seek restitution, and preserve a fair playing field for employers who follow the law by enforcing District
laws on behalf of the public at large, rather than representing individual claimants. This will be more efficient and fair because it allows the OAG to expend public resources litigating the cases with the biggest impact and without facing undue barriers when an individual victim might become unavailable after a case has begun. The section also contains a limit on any restitution obtained by the OAG to avoid double recovery by excluding from an award any amount already recovered by employees.

2. Provide that only labor organizations and employee associations, and not other membership groups, can sue on behalf of their members

The 2014 wage theft law allowed any entity aggrieved by wage theft violations to sue to enforce the law. The intent of this provision was to recognize that unions and other employees are harmed when a business is able to violate the law without repercussion, however, the phrase “any entity” was viewed as too broad. Public witnesses testified that it would help to deter wage theft if unions and other employee associations could help to police their industries. Witnesses particularly highlighted cases where individual employees might decline to step forward due to fear of retaliation or where unions or employee associations might be more able to obtain legal counsel to pursue a case effectively. Consequently, the Subcommittee Print strikes the “any entity” language, but includes a narrower provision allowing for actions by “a labor organization or association of employees whose member is aggrieved by a violation.”

3. End the overtime exemption for parking lot attendants

Garage and parking lot attendants already have a right to be paid overtime under federal law, but because of an outdated exemption in District law, these employees are not able to pursue their rights to overtime at DOES or use any of the tools provided by the District’s wage laws in court to enforce their overtime rights. This provision would eliminate this loophole and treat garage and parking lot attendants like every other type of worker. The D.C. Council unanimously eliminated a similar loophole for carwash attendants in 2012 by passing the Car Wash Employee Overtime Amendment Act of 2011 (L19-127), effective May 31, 2012.

4. Clarify that general contractors and clients of temporary staffing agencies may waive their right to indemnification by contract

The Wage Theft Prevention Amendment Act of 2014 allowed victims of wage theft to recover damages from general contractors or the clients of staffing agencies for whom they worked by making those general contractors and staffing agency clients jointly and severally liable for violations of subcontractors or staffing agencies they hired. The Subcommittee received extensive testimony about how, without this provision, wage theft victims are often unable to collect from subcontractors or staffing agencies that are “fly-by-night” and wage theft victims can be forced into complex litigation surrounding whether the general contractor or staffing agency’s client also constitutes the victim’s legal “employer.” Joint liability reduces this
need for additional litigation and also creates the proper incentives for general contractors and client businesses to contract with reputable companies who will not commit wage theft.

In most cases, under the Wage Theft Prevention Amendment Act of 2014, the general contractor or client is then able to seek indemnification from the subcontractor or staffing agency for any resulting damages. However, in response to concerns raised by DOES and the OAG, the Subcommittee Print clarifies that (1) general contractors and clients can waive their right to indemnification – though not their joint and several liability – via contract, (2) intermediate subcontractors are included and also subject to joint and several liability with other subcontractors and the general contractor, and (3) the subcontractor or staffing agency must ultimately be found to have committed the violation, rather than merely being “alleged” to have violated the law in order for others to be jointly and severally liable for the violation.

5. Clarify that the DC Court of Appeals will hear appeals from agency decisions

The Subcommittee Print clarifies that appeals of administrative orders will be heard by the D.C. Court of Appeals, a change suggested by the Office of Attorney General to reflect existing precedent for appeals of agency decisions.

6. Clarify the administrative and judicial remedies available for violations

Several witnesses, including DOES, testified that DOES does not believe that it currently has the authority to include in its administrative order a requirement that a business reinstate an employee, even when DOES has determined the employee was terminated or demoted in retaliation for filing or participating in a wage theft case and that this authority should be clarified. There was also confusion regarding when treble liquidated damages are available for wage theft cases and the nature of a good faith exception to the treble damages requirement for minimum wage violations. The Subcommittee Print clarifies that the same remedies – including the payment of any back wages unlawfully withheld, liquidated damages equal to treble the amount of unpaid wages, statutory penalties, reasonable attorney fees and costs, such other legal or equitable relief as may be appropriate, including reinstatement in employment, and other injunctive relief – are available to be included in (1) initial determinations by DOES, (2) administrative orders issues by administrative law judges after formal hearings, and (3) court, and that such remedies are available for unpaid wages, misclassification of employees, minimum or living wage violations, and for violations of the Accrued Sick and Safe Leave Act. The Subcommittee Print does, however, authorize a court to award a lesser amount of liquidated damages in cases where an employer violates the minimum wage law in good faith and had reasonable grounds for the belief that they were not violating the law.

7. Allow employees to acknowledge the terms of their employment electronically instead of having to physically sign paperwork each time their terms of employment change
To mitigate any burden of delivering notices to employees, the Subcommittee Print includes language authorizing employers to maintain electronic rather than signed physical records of notices, as long as the electronic records are sufficient to prove that employees acknowledged receiving the required notices.

III. Additional Provisions Added to the Subcommittee Print

In response to witness testimony and input from the Executive, the Subcommittee included additional provisions in the Subcommittee Print that will:

1. Clarify that wage theft cases should be heard by administrative law judges at the Office of Administrative Hearings

DOES testified that it has recently finalized a Memorandum of Understanding that the formal hearings for wage and leave cases will be heard by the Office of Administrative Hearings. The Subcommittee believes it will aid claimants, employers, and practitioners to specify this administrative venue in the law itself and adopts language to do so that was originally proposed in Bill 21-711, which was introduced at request of the Mayor.

2. Clarify record keeping requirements, including how long employers should keep records and what they should provide to employees on paystubs

DOES testified that there was a need to establish consistency under all wage and leave laws for the length that businesses are required to maintain employment records, which under the Wage Theft Prevention Amendment Act of 2014 is 3 years “or the prevailing federal standard, whichever is greater.” DOES also assured the Subcommittee that it would be issuing regulations identifying the “prevailing federal standard” to help employers better understand their record-keeping obligations. In addition, DOES testified that the Minimum Wage law requirements for these records should also be incorporated into the Wage Payment law, along with additional due process protections required under the Supreme Court’s Patel v. City of Los Angeles, 135 S. Ct. 2443 (2015) decision. The Subcommittee Print incorporates these recommendations.

3. Standardize terminology for serving administrative complaints

DOES testified that it will be serving these complaints on defendants and that certain language in existing law should be adjusted to clarify the timelines for different stages of the administrative process based on the time complaints are “served” rather than “mailed” or deliver.” The Subcommittee Print incorporates these recommendations, although certified mail rather than personal service remains an acceptable means of service if the agency determines in the future that certified mail would be an efficient and fair method for serving complaints.

4. Clarify that plaintiffs can bring opt-in collective actions and opt-out class actions

Prior to February 26, 2015, wage theft plaintiffs could only bring opt-in “collective” actions in court. This meant that any victim who wished to participate in the lawsuit would have to
affirmatively opt to become a plaintiff, risking retaliation from his or her employer. The 2014 wage theft law added the option for plaintiffs to bring an opt-out “class” action, which would make it easier for one or a few brave employees to enforce the rights of all affected employees.

Unfortunately, at least one court has interpreted Wage Theft Prevention Amendment Act of 2014 as having replaced the prior collective action option with a class action as the only option, rather than allowing both choices. This will result in substantial judicial inefficiency because some plaintiffs may not qualify for opt-out class action certification or will wish to pursue simultaneously claims under the federal Fair Labor Standards Act (which permits only opt-in collective actions). The Subcommittee Print clarifies that plaintiffs in cases with multiple affected employees have both avenues for seeking redress in court or may begin as a collective action and then file for class certification.

5. Clarify that the District Government’s adoption of “Salazar” matrix for calculating attorney fees in wage theft cases does not represent a determination that this matrix is appropriate for determining reasonable attorney fees under other statutes

Several public witnesses and both government witnesses testified regarding the proper method for calculating reasonable attorney fees in wage theft cases. All of the public witnesses who focused on the issue testified in support of the current law’s endorsement of the Legal Services Index (LSI) Salazar standard, which they testified provided a more effective incentive for attorneys to represent low-wage wage theft victims. For example, Omar Vincent Melehy of Melehy & Associates testified:

Effective legal representation of wage theft victims often requires the attorney undertaking the representation to overcome substantial barriers unique to wage theft cases which, in the absence of the availability of Salazar rates, can quickly make such representation cost prohibitive for smaller law firms and solo practitioners. Such barriers include paying for interpreters to communicate with clients who do not speak English, dealing with unscrupulous employers who often destroy employment records, making the task of recreating an employee’s work history nearly impossible, and trying to collect on behalf of the client once a judgment is entered.

Several other practitioners and nonprofits who represent low-wage victims of wage theft or refer cases to the private bar offered similar testimony, particularly highlighting the risk that even after winning in court on the merits, judgments often ultimately prove uncollectable. Attorneys testified that wage theft cases can take several years under the best of circumstances, but can take even longer when there are collection issues. In addition, attorneys who represent low-wage workers also take on the risk that after investing substantial time in a case, they will lose the opportunity to obtain any fees because the client may need to relocate in the middle of a case in order to find employment or in response to issues with their immigration status.

The OAG, on the other hand, urged repeal of the Salazar standard for calculating reasonable attorneys’ fees in wage theft cases. The OAG testified that Salazar should not apply to wage theft cases because they “are generally single issue cases, require few witnesses, and unlike complex cases are generally resolved within a year.” The OAG noted that federal judges have relied on the Wage Theft Prevention Amendment Act of 2014 to award Salazar level attorney fees in cases that are unrelated to wage theft. The OAG testified that the United States Attorney Office’s Laffey matrix, which has been used for litigation against the District under the federal Individuals with Education Disabilities Act, is more appropriate. The OAG testified that it “appreciates the underlying rationale” for adopting the higher Salazar matrix and also wanted “to encourage lawyers to handle as many legitimate wage theft cases as possible,” but argued that Salazar rates are not the answer because (1) DOES says Salazar rates have not resulted in an uptick of litigation, (2) private lawyers are willing to take IDEA cases, where they have been paid the lower USAO matrix rates, (3) codifying Salazar is having an adverse financial impact on the government, and (4) the focus should be on encouraging victims to pursue cases rather than attorneys to take cases. The OAG agreed with public witnesses that victims in desperate need may accept settlements that are much less than they are rightfully owed and may not be able to pursue claims while looking for other employment or working jobs without flexible schedules, but preferred finding alternative ways to “incentivize victims to carry forward with litigation.”

The Subcommittee concluded that the current fee provision is appropriate to compensate attorneys who represent plaintiffs in wage theft cases only. The Subcommittee does not intend that this provision should be used to draw inferences for an appropriate hourly attorney fee rate for cases brought under other laws or to establish a prevailing market rate in the District of Columbia for attorneys in complex civil litigation.

II. LEGISLATIVE CHRONOLOGY

March 3, 2015 Introduction of Bill 21-120, by Councilmembers Silverman, Nadeau, Allen, Bonds, and Chairman Mendelson

March 3, 2015 Referral of Bill 21-120 to the Committee on Business Consumer and Regulatory Affairs

March 13, 2015 Notice of Intent to Act on Bill 21-120 is published in the District of Columbia Register

September 20, 2016 Re-referral of Bill 21-120 to the Committee of the Whole, Subcommittee on Workforce

September 23, 2016 Re-referral is published in the District of Columbia Register

4 See, e.g., Makray v. Perez, No. 12-520 (BAH), February 8, 2016, (D.D.C)
5 Neither the OAG nor DOES testified regarding whether DOES has conducted a survey of litigation under wage and leave laws in order to accurately assess whether there has been an increase in the availability of legal representation for wage theft victims as a result of the Wage Theft Prevention Amendment Act of 2014 and its incorporation of the Salazar fee matrix.
III. POSITION OF THE EXECUTIVE

Director Deborah Carroll testified on behalf of the Executive regarding Bill 21-120. Her testimony is summarized below.

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 21-120 on Wednesday, October 26, 2016. The testimony summarized below is from that hearing. Copies of written testimony are attached to this report.

Hannah Kane, Worker Justice Organizer, Many Languages One Voice (MLOV) testified about her support for requiring triple liquidated damages in all wage theft cases. She opposed removing the Mayor’s ability to revoke or suspend business licenses as a result of willful wage theft violations or a business’s failure to follow administrative or court orders in wage theft cases. She also testified that the Mayor should not be able to settle and adjust workers’ claims. She stated that wage theft is most prevalent in the construction, restaurant and cleaning industries where employees are often offered an illegal wage or are given checks representing fewer hours of work than they completed. She added that language access has not been achieved: workers state that they need vital documents in their language but they are still provided documents only in English.

Jose Cruz, Many Languages, One Voice (MLOV) testified about the importance of the power to suspend business licenses and to punish businesses who don’t pay their workers. He relayed his experience in the construction industry in which employers threaten to report workers to immigration authorities if workers complain about missing wages. He has relied on the police to compel a specific employer to pay him wages owed.

Julio Palomo, Assistant Business Manager, Liuna Local 11 testified about the importance of providing the OAG with subpoena power and granting the OAG the authority to independently litigate wage theft cases directly in court.
Jhonny Castillo, Many Languages One Voice (MLOV) testified about his perception that since the 2014 Wage Theft Prevention Act passed, the Office of Wage-Hour has not enforced or fully implemented the law and has not begun holding mandated hearings. He was active in lobbying for the Wage Theft Prevention Act and after its passage helped investigate bad actors. Based on his experience with the Office of Wage-Hour, he shared that workers are often frustrated by the long process and subsequently drop their cases.

Bruno Avila, Many Languages, One Voice (MLOV) testified about his experience filing cases with the Office of Wage-Hour. He testified that he has witnessed or participated in 20 filed cases, only 4 of which were resolved by the Office of Wage-Hour. These cases were all in DC, in the construction, maintenance, or restaurant industries. He states that the Office of Wage-Hour be supervised more closely since, in his view, it has proven ineffective.

Maria Sandoval, Many Languages, One Voice (MLOV) testified about the rampant employer abuses in her work history.

Zeferina Avila, Many Languages One Voice (MLOV) testified about the need to hold contractors responsible for wage abuses committed by their subcontractors. She recounted her experience with wage theft and explained wage theft caused her to lose her apartment after she was unable to pay a late fee for her rent.

Jonathan C. Puth, Metropolitan Washington Employment Lawyers Association, Correia & Puth, PLLC testified about the need to maintain the provision of attorney’s fees at the rates approved in the Salazar court decision. He said the Salazar rate represents the most accurate, if not conservative, reflection of the market for legal services in DC. Because it is so difficult for low-wage workers to get legal assistance for wage theft cases, he testified that the Salazar rate properly incentivizes private attorneys to take on these cases. He stated that incentives are important because there are very few employment lawyers who choose to represent low-wage workers because contractors are hard to track down, language barriers exist, and the amount recouped is often small. He also testified that the U.S. Attorney’s Office matrix should not be used as a ceiling because, in Salazar, the DC Circuit found that that rate underestimates market rates by about 30% while the Salazar matrix more accurately reflects market rates in D.C. for complex federal litigation.

Ilana Boivie, Senior Policy Analyst, DC Fiscal Policy Institute testified in support of Bill 21-120 and detailed the increase in violations reported to the Office of Wage-Hour since the Wage Theft Prevention Amendment Act of 2014 was enacted, stating that the OWH witnessed a 27% increase in minimum wage cases and 182% increase in living wage cases. She opposes reducing fees to attorneys who represent wage theft victims, which she said would discourage private attorneys from taking on these clients.

Philip Fornaci, Executive Director, DC Employment Justice Center testified about his opposition to the Mayor’s proposed revision of attorney fees for wage theft cases. He stated that as a matter of judicial economy having private attorneys that are convincingly able to threaten litigation is important in reaching a settlement. Mr. Fornaci subsequently submitted additional written testimony proposing an amendment clarifying that workers may elect to sue individually,
jointly, in a collective action as allowed under the federal Fair Labor Standards Act, as a class action, or first as a collective action and subsequently as a class action. He stated that since the District Court of the District of Columbia interpreted the Wage Theft Prevention Amendment Act of 2014 as disallowing workers to sue through the opt-in collective action procedure similar to the FLSA, the Council must pass an amendment to clarify and remain faithful to that Act’s intent.

Andrew Hass, Litigation Attorney, DC Employment Justice Center testified about the need to keep the general contractor and temporary staffing agency joint liability provision intact in order to prevent workers from being stuck waiting indefinitely for their wages and damages from a subcontractor who is fly-by-night.

Elizabeth Falcon, Executive Director, DC Jobs with Justice testified that the Mayor should retain the power to revoke or suspend the business licenses of offending employers. She also testified in support of maintaining joint liability with the general contractor in order to encourage general contractors to fully vet their subcontractors. She encouraged Office of the Attorney General to take on cases of major violators to relieve the pressure on DOES.

Dennis A. Corkery, Washington Lawyers’ Committee for Civil Rights and Urban Affairs testified that most wage theft victims are not able to afford lawyers and fee shifting makes a private cause of action possible for low-wage workers. He encourages the continued use of the Salazar rates, which he said properly compensate lawyers who work in a high-cost jurisdiction such as D.C. and represent a clearer standard than the “reasonable fees” provision in Bill 21-711. He testified that the Washington Lawyers’ Committee would be able to take on and refer fewer wage theft cases if the attorney fees available were lowered. Lastly, he testified that potentially paying attorney fees serves as an important deterrent for employers.

Daniel A. Katz, Senior Counsel, Metropolitan Washington Employment Lawyers Association testified about the need to maintain joint liability language and to allow attorneys to receive fees calculated in accordance with Salazar.

Ian Paregol, Executive Director, DC Coalition of Disability Service Providers testified that service providers are responsible for paying their staff the prevailing living wage, but experience hardship when the District does not reimburse providers at a rate that accounts for the higher living wage. He expressed that providers face a difficulty when they are liable for wage theft though they have no control over their funding stream. He testified that if providers and Executive agencies cannot figure out a plan for 2017, he hoped the Council would assist them.

Albert Wynn, Capital Area Minority Contractors and Business Association and Robert Green III, Capital Area Minority Contractors and Business Association testified about the need to end Project Labor Agreement requirements for workers to contribute to multi-employer pension plans. They termed these contributions “pension theft,” noting that many employees might not vest in the pension plans or the plans might be inadequately funded. Green testified that the DOES needs to be further invested in and is not successful because it does not have a clear understanding of how construction works and therefore does not know how to track violating employers. He testified that wage theft is rampant in the construction industry and that
CAMCBA regularly reports general contractors, but the government is not strong enough to enforce the laws.

**Eric J. Jones, Associated Builders and Contractors (ABC) of Metro Washington** testified about his support for Bill 21-711 with an added amendment to make all future negotiated collective bargaining amendments subject to the sick leave law. He added that the Office of Wage-Hour is not successful because of its large purview and the fact that that is does not specialize in any of the areas it oversees.

**Stephen W. Courtien, Community Hub for Opportunities in Construction Employment (C.H.O.I.C.E.) Field Representative** testified about the importance of granting the OAG authority to litigate cases and allocating funding that allows the OAG to hire lawyers capable of prosecuting contractors. He also testified that DOES should be allowed to refer cases to the OAG and that OAG should be able to request cases from DOES. He stated that OAG is better suited to take on large cases prevalent in the construction industry.

**John Collins, Director of Organizing, International Brotherhood of Electrical Workers (IBEW)/ Local 26** testified about the need for OAG to investigate and litigate wage theft cases to properly deter employers from committing wage theft. He stated legitimate businesses cannot compete with those who commit wage theft due to the 30-40% additional burden they must carry by properly classifying workers and properly paying workers and payroll taxes.

**Carlos Jimenez, Executive Director, the Metropolitan Washington Council, AFL-CIO** testified in support of Bill 21-120. He highlighted the importance of clarifying the OAG’s authority to investigate and litigate wage theft claims. He stated that DOES should be able to refer cases it receives to the OAG’s office and that the OAG’s office should implement a more extensive vetting process for companies receiving city contracts and disqualify those who have violated wage theft laws.

**Emma Cleveland, Political Coordinator, Capital Area District, SEIU 32BJ** testified in support of Bill 21-120, focusing on the importance of maintaining treble damages provisions and aligning the procedures and remedies available in minimum wage and unpaid wage laws. She testified that Office of Wage-Hour should proactively be imposing fines and seeking damages for workers. She also explained that in the cleaning industry, wage theft occurs through the non-payment of overtime, classifying workers as salaried and paying a weekly rate that does not take into account the number of hours worked, non-payment, and the failure to pay overtime.

**Nick Wertsch, Kalmanovitz Initiative for Labor and the Working Poor at Georgetown University** testified about his opposition to the language in the Mayor’s amendments that strikes the Mayor’s ability to suspend or revoke business licenses of willful violators. He urges DOES to take a more proactive approach to resolving cases. He opposes the amendments to reduce attorney fees below the *Salazar* standard.

**Sophia Bauerschmidt Sweeney, student, Georgetown University** testified about the need for stronger wage theft protections because employers, even after being found guilty of violating wage theft laws, continue their violations due to weak enforcement.
The DC Chamber of Commerce submitted written testimony in support of Bill 21-711 and the changes made in the emergency and temporary legislation already passed by the DC Council. The DC Chamber testified in favor of “a bill that protects employers from bad actors who put them at a competitive disadvantage by not paying wages, provides a clear and formal hearing process that results in quick resolution of claims and provides written notice of wages.” The DC Chamber supported “clear, written notices of what wages were agreed to between employee and employers . . . so long as the requirements are very clear,” noting appreciatively language clarifying the length of records retention requirements and allowing for electronic communications and record-keeping. The DC Chamber also supported restoring the ability of contractors and subcontractors to waive indemnification procedures by contract. Finally, the DC Chamber expressed concern that allowing DOES to participate in disputes by taking assignment of claims while with the other hand making determinations at DOES about the claims would be “inappropriate” and asked for the bill to respond to the Fourth Amendment requirements of the Supreme Court’s decision in Patel v. City of Los Angeles.

Omar Vincent Melehy, Attorney at Melehy & Associates, submitted written testimony in opposition to Bill 21-711’s attempt to replace the Salazar rates for attorney fees. He stated that Salazar rates provide a needed incentive for private attorneys, especially solo practitioners and small firms, to take wage theft cases which tend to be time consuming and difficult to prove. He also wrote that Salazar rates are most accurate because they are empirically derived using factors specific to the D.C. market.

Edward Smith, Executive Director, District of Columbia Nurses Association submitted written testimony in support Bill 21-120. He stated that DOES is not equipped to handle complex wage theft cases and that the OAG should receive full enforcement powers, including subpoena power and the ability to monitor and penalize violating employers.

Government Witnesses

Natalie Ludaway, Chief Deputy Attorney General, Office of the Attorney General, testified that the Office of Attorney General’s “supports the policy goals and objectives of Bill 21-120” with one revision. Specifically, OAG testified that the office needed “authority to investigate and litigate large-scale or pattern and practice wage theft cases directly in court” to reduce the burden on DOES and to send “a clear message to large-scale bad actors that defrauding District workers and not paying their fair share of taxes will not be tolerated.” OAG noted several instances where Bill 21-120 responded to the OAG’s concerns with existing law, including: the clarification of contractors’ right to limit indemnification by contract (which addressed the OAG’s concerns that the 2014 Act could otherwise be construed to impair existing contract rights), tailoring criminal penalties in a way that preserves the OAG’s responsibility for prosecuting offenses, rather than transferring responsibility to the United States Attorney, clarifying that appeals of administrative orders would be made to the DC Court of Appeals, limiting organizational standing to labor and employee organizations, giving the Mayor rulemaking authority, clarifying the time period when an employer must maintain business records, clarifying that the Mayor could post copies of certain forms on the District government’s website rather than provide them individually.
to each employer, and repealing a retroactive applicability date of the Wage Theft Prevention Amendment Act of 2014.

The OAG testified that Salazar should not apply to wage theft cases because they “are generally single issue cases, require few witnesses, and unlike complex cases are generally resolved within a year.” The OAG noted that federal judges have relied on the Wage Theft Prevention Amendment Act of 2014 to award Salazar level attorney fees in cases that are unrelated to wage theft. The OAG testified that the United States Attorney Office’s Laffey matrix, which has been used for litigation against the District under the federal Individuals with Education Disabilities Act, is more appropriate. The OAG testified that it “appreciates the underlying rationale” for adopting the higher Salazar matrix and also wanted “to encourage lawyers to handle as many legitimate wage theft cases as possible,” but argued that Salazar rates are not the answer because (1) DOES says Salazar rates have not resulted in an uptick of litigation, (2) private lawyers are willing to take IDEA cases, where they have been paid the lower USAO matrix rates, (3) codifying Salazar is having an adverse financial impact on the government, and (4) the focus should be on encouraging victims to pursue cases rather than attorneys to take cases. The OAG agreed with public witnesses that victims in desperate need may accept settlements that are much less than they are rightfully owed and may not be able to pursue claims while looking for other employment or working jobs without flexible schedules, but preferred finding alternative ways to “incentivize victims to carry forward with litigation.”

Deborah Carroll, Director, Department of Employment Services, testified that the Executive supports amending Bill 21-120 to maintain the use of DOES’s sample template for employers, rather than requiring DOES to publish a specific prescriptive form that employers must use.

The rest of DOES’s testimony focused on Bill 21-711, which contained several provisions similar to Bill 21-120. Director Carroll stated that Mayor Bowser “is committed to making sure that our workers are given a Fair Shot on the Pathway to the Middle Class” and that “these goals cannot be achieved if workers are not receiving the wages required by law.” DOES shared recommendations for several specific areas:

- DOES testified that the provision specifying joint and several liability for general contractors should apply to those who were “found” rather than “alleged” to have failed to pay an employee. DOES was neutral on the application of joint and several liability to intermediate contractors.

- DOES testified that while criminal penalties for negligent offenses should be capped at $2,500 per affected employee and $5,000 per affected employee for subsequent offenses, criminal penalties for willful offenses should be $5,000 for a first offense and $10,000 for a subsequent offense regardless of the number of employees affected because of a “concern that the variance in penalty amounts lack proportionality given the difference in offense.”

6See, e.g., Makray v. Perez, No. 12-520 (BAH), February 8, 2016, (D.D.C)
7 Neither the OAG nor DOES testified regarding whether DOES has conducted a survey of litigation under wage and leave laws in order to accurately assess whether there has been an increase in the availability of legal representation for wage theft victims as a result of the Wage Theft Prevention Amendment Act of 2014 and its incorporation of the Salazar fee matrix.
• DOES recommended the “reasonable attorney’s fee” standard.

• DOES recommended referring to the timing of administrative complaints being “served” rather than “mailed” or “delivered” for the sake of consistency.

• DOES recommended restoring language repealed by the Wage Theft Prevention Amendment Act of 2014 that had authorized the Mayor to take assignment in trust from an employee, and to settle and adjust those claims.

• DOES recommended consistent language across wage and hour laws addressing the “prevailing federal standards” for how long business records must be kept, in cases where those standards exceed the District’s 3 year minimum for maintaining such records. DOES also recommended adding language to protect the due process rights of business owners to challenge a request to search their records, in accordance with the recent Supreme Court case Patel v. City of Los Angeles.

• DOES recommended permitting employers to prove compliance with notice requirements by retaining emails from their employees acknowledging receipt of the notice as an allowable alternative to retaining signed hard copies of such notices.

• DOES noted that the D.C. Council has already passed an amendment to the Accrued Sick and Safe Leave Act of 2008 clarifying that employees in the building and construction trades are covered by that law absent a collective bargaining agreement that expressly waives such coverage.

• In response to questions, DOES testified that it would be helpful to clarify the process and remedies for dealing with employees that DOES finds were terminated or otherwise retaliated against, as well as the authority of DOES or OAH to order the employer to be reinstated.

• In response to questions regarding the Executive’s ability to revoke or suspend business licenses of willful violators of wage laws or those who refuse to comply with administrative or judicial orders, DOES testified that “between DCRA and the licensing agencies, we have the ability to enforce the law” and that “the bad actors, if they’re continuing to fail to comply with the law, we believe, should not be able to continue to do business in the District of Columbia.”

The Committee received no testimony or comments in opposition to Bill 21-120.

VI. IMPACT ON EXISTING LAW

Bill 21-120 amends An Act To provide for the payment and collection of wages in the District of Columbia to clarify that Office of Administrative Hearings judges will hear wage theft
cases, to exempt an employer from being required to pay wages to bona fide executive, administrative, and professional employees at least twice during each calendar month, to clarify that subcontractors include intermediate subcontractors, to clarify that general contractors and clients of temporary staffing agencies may waive their right to indemnification, to clarify that the Attorney General can bring civil enforcement actions in court and inspect business records, to incorporate record-keeping requirements from the Minimum Wage Act Revision Act, to allow businesses to challenge a demand for business records before a neutral decision-maker, to revise criminal penalties for violations of the act, to clarify the remedies and processes for civil and administrative actions to enforce wage theft laws, to clarify deadlines pertaining to service of wage theft complaints membership organizations may bring civil actions on behalf of their members, and to clarify the Mayor’s authority to issue rules, to require the Mayor to issue rules identifying relevant prevailing federal standards for record keeping requirements, to amend the Minimum Wage Act Revision Act of 1992 to remove the exclusion of parking lot and garage attendants from receiving the protections of the District’s minimum and overtime laws, to require the Mayor to issue rules identifying relevant prevailing federal standards for record keeping requirements, to exempt employers from keeping precise time records for bona fide executive, administrative, professional non-hourly employees, to allow businesses to challenge a demand for business records before a neutral decision-maker, to clarify when an employer or a temporary staffing firm must provide notices to an employee in a second language, to require the Mayor to publish translations of notices and sample templates online in all the languages required by the Language Access Act, to clarify how the Mayor shall make certain information available to employers, to clarify that general contractors and clients of temporary staffing agencies may waive their right to indemnification, to clarify the remedies and procedures available in civil and administrative actions; to repeal an obsolete provision of the Wage Theft Prevention Amendment Act of 2014; to amend the Accrued Sick and Safe Leave Act of 2008 and the Living Wage Act of 2006 to require the Mayor to issue rules identifying relevant prevailing federal standards for record keeping requirements; and to provide that all rules, forms, and regulations issued pursuant to the Wage Theft Prevention Amendment Act of 2014 and to any emergency and temporary amendments to that act shall remain in force until repealed or superseded.

VII. FISCAL IMPACT

The attached November 7, 2016 fiscal impact statement from the District’s Chief Financial Officer states that funds are sufficient in the FY 2017 through FY 2021 budget and financial plan to implement the bill.

VIII. SECTION-BY-SECTION ANALYSIS

Section 1

Short title.

Section 2

Amends An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat 976; D. C. Official Code § 32-1301 et seq.), also known as “the Wage Payment Act.”
Subsection (a)  Defines the term “administrative law judges” as judges at the Office of Administrative Hearings and defines the term “Attorney General.”

Subsection (b)  Allows employers to pay bona fide professional, administrative, and executive employees once rather than twice per month.

Subsection (c)  Clarifies that the term “subcontractors” includes any intermediate subcontractors and clarifies that general contractors and clients of temporary staffing agencies may waive their right to indemnification by contract.

Subsection (d)  Authorizes the Attorney General to investigate, issue subpoenas, and bring civil actions to enforce wage and hour laws and specifies the forms of relief available, while providing that the Attorney General may not recover amounts already recovered by an employee. It also incorporates record keeping requirements from the Minimum Wage Revision Act as part of the Wage Payment Act and allows the Attorney General to inspect relevant business records, after businesses are provided with an opportunity to challenge a demand for record before judge, as required by the Patel decision by the U. S. Supreme Court.

Subsection (e)  Modifies the criminal penalties for violations of the Wage Payment Act for negligent or willful offenses.

Subsection (f)  Clarifies the remedies and processes available for violations of wage and hour laws in court, who may sue, and the types of collective and class actions available to victims of these violations. It also specifies that no one can be awarded any amount already recovered by an employee and that the District is not required to pay court filing fees.

Subsection (g)  Clarifies that the statutory deadlines for processing of wage and hour complaints will be based on the date when complaints are served rather than mailed. It also clarifies that the same monetary and equitable remedies, including reinstatement, are available in an initial determination by the Mayor or in an order by an Administrative Law Judge as would be available in court. It also clarifies that the District does not have to pay filing fees in court and that appeals of administrative decisions will be heard by the District of Columbia Court of Appeals.

Subsection (h)  Clarifies that no inference shall be drawn that attorney fees calculated pursuant to Salazar v. District of Columbia, 123 F. Supp. 2d 8 (D. D. C. 2000) are reasonable for any statute other than the Wage Payment Act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act.
Subsection (i) Clarifies that the Mayor shall issue rules to implement the provisions of the Wage Payment Act.

Subsection (j) Clarifies that businesses are required to maintain business records for 3 years, or longer in cases when the prevailing federal standards are greater than 3 years and requires the Mayor to issue rules identifying the length of those prevailing federal standards.

Section 3 Section 3 amends the Minimum Wage Act Revision Act of 1992.

Subsection (a) Repeals the exemption from overtime requirements for garage and parking lot attendants, aligning the District's overtime law with existing federal overtime requirements for these employees.

Subsection (b) Authorizes the Attorney General to subpoena business records and specifies that a person or entity that receives a subpoena may move to quash or modify the subpoena in court.

Subsection (c) Clarifies that the Minimum Wage Law also requires businesses to maintain business records for 3 years, or longer in cases when the prevailing federal standards are greater than 3 years and requires the Mayor to issue rules identifying the length of relevant prevailing federal standards. It also adds an exception to employers' obligation to track the "precise times worked each day" for bona fide professional, administrative, and executive employees who are exempt from overtime and not paid on an hourly basis. It requires that businesses be provided with an opportunity to challenge a demand for business records before a judge, including an administrative law judge, as required by the Patel v. City of Los Angeles decision by the U. S. Supreme Court. It clarifies that the Mayor shall publish online translations of required notices and sample templates in all languages required by the Language Access Act (as well as any other languages the Mayor considers appropriate) and that businesses are only obligated to provide translations of these notices and sample templates once the Mayor has published translations in relevant languages.

Subsection (d) Clarifies the Mayor shall publish online translations of required sample templates for temporary staffing firms in all languages required by the Language Access Act (as well as any other languages the Mayor considers appropriate) and that temporary staffing firms are only obligated to provide translations of these notices once the Mayor has done so.

Subsection (e) Aligns the language specifying the penalty for failing to keep business records in accordance with the amendments made in Section 3(b).

Subsection (f) Aligns the remedies for retaliation to match those provided by the Wage Payment Act.
**Subsection (g)**  
Aligns the remedies and administrative process for any violations of the Minimum Wage Act with those provided for violations of the Wage Payment Act and clarifies that courts may award less than triple damages in cases where the employer demonstrates good faith, that the term “subcontractors” includes any intermediate subcontractors, and that general contractors and clients of temporary staffing agencies may waive their right to indemnification by contract.

**Subsection (h)**  
Clarifies that the same procedures and remedies are available for administrative complaints of violations of the Minimum Wage Revision Act as for violations of the Wage Payment Act.

**Section 4**  
Aligns the Accrued Sick and Safe Leave Act of 2008 and the Living Wage Act requirement for businesses to maintain business records to match those in the Wage Payment and Minimum Wage Act and requires the Mayor to issue rules identifying the length of relevant prevailing federal standards.

**Section 5**  
Clarifies that all rules and forms published under emergency and temporary amendments to the Wage Theft Prevention Act of 2014 remain in force until amended, repealed or superseded.

**Section 6**  
Repeals prior temporary and emergency legislation superseded by Bill 21-120 and repeals language that made the Wage Theft Prevention Act of 2014 apply retroactively on October 1, 2014, rather than its effective date of February 26, 2015.

**Section 7**  
States the Fiscal Impact of Bill 21-120.

**Section 8**  
Effective date.

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**IX. SUBCOMMITTEE ACTION**

On November 7, 2016, the Committee met to consider Bill 21-120, the “Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2016.” The meeting was called to order at 10:20 a.m., and Bill 21-120 was item III-1 on the agenda. After ascertaining a quorum (Chairperson Silverman and Councilmembers Allen, Nadeau, Silverman, Todd, and White present), Chairperson Silverman moved the print with leave for staff to make technical and conforming changes. After an opportunity for discussion, the vote on the print was unanimous (Chairperson Silverman and Councilmembers Allen, Nadeau, Silverman, Todd, and White present).
The Chairperson then moved the report with leave for staff to make technical, conforming, and editorial changes. After an opportunity for discussion, the vote on the report was unanimous (Chairperson Silverman and Councilmembers Allen, Nadeau, Silverman, Todd, and White present). The meeting adjourned at 10:30 a.m.

X. ATTACHMENTS

1. Bill 21-120 as introduced.
2. Written Testimony.
3. Fiscal Impact Statement for Bill 21-120.
4. Legal Sufficiency Determination for Bill 21-120.
5. Comparative Print for Bill 21-120.
6. Subcommittee Print for Bill 21-120.
AN AMENDMENT

#1

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Date: November 15, 2016

Amendment offered by: Councilmember Elissa Silverman, Chair of Subcommittee on Workforce

To: B21-120, "Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015”.

Version: Committee Print

Amend section 2, beginning Page 9, Line 219 by striking the word “treble.”

Rationale:
In order to increase administrative efficiency, employers should have an incentive to immediately admit wage theft violations and agree to prompt payment rather than prolonging the administrative process.

While employers who are found liable for wage theft in court or after contested administrative hearings will have to pay employees liquidated damages equal to treble the amount of unpaid wages, employers who resolve administrative complaints more quickly and do not force their employees to undertake the time and expense of litigation or contested administrative hearings should be allowed to pay a smaller amount of liquidated damages.
A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend An Act To provide for the payment and collection of wages in the District of Columbia to clarify that Office of Administrative Hearings judges will hear wage theft cases, to exempt an employer from being required to pay wages to bona fide executive, administrative, and professional employees at least twice during each calendar month, to clarify that subcontractors include intermediate subcontractors, to clarify that general contractors and clients of temporary staffing agencies may waive their right to indemnification, to clarify that the Attorney General can bring civil enforcement actions in court and inspect business records, to incorporate record-keeping requirements from the Minimum Wage Act Revision Act, to allow businesses to challenge a demand for business records before a neutral decision-maker, to revise criminal penalties for violations of the act, to clarify the remedies and processes for civil and administrative actions to enforce wage theft laws, to clarify deadlines pertaining to service of wage theft complaints and that membership organizations may bring civil actions on behalf of their members, to clarify the Mayor's authority to issue rules, to require the Mayor to issue rules identifying relevant prevailing federal standards for record keeping requirements, to amend the Minimum Wage Act Revision Act of 1992 to remove the exclusion of parking lot and garage attendants from receiving the protections of the District's minimum and overtime laws, to require the Mayor to issue rules identifying relevant prevailing federal standards for record keeping requirements, to exempt employers from keeping precise time records for bona fide executive, administrative, professional non-hourly employees, to allow businesses to challenge a demand for business records before a neutral decision-maker, to clarify when an employer or a temporary staffing firm must provide notices to an employee in a second language, to require the Mayor to publish translations of notices and sample templates online in all the languages required by the Language Access Act, to clarify how the Mayor shall make certain information available to employers, to clarify that general contractors and clients of temporary staffing agencies may waive their right to indemnification, to clarify the remedies and procedures available in civil and administrative actions; to repeal an obsolete provision of the Wage Theft Prevention Amendment Act of 2014; to amend the Accrued Sick and Safe Leave Act of 2008 and the Living Wage Act of 2006 to require the Mayor to issue rules identifying relevant prevailing federal standards for record keeping requirements; and to provide that all rules,
forms, and regulations issued pursuant to the Wage Theft Prevention Amendment Act of 2014 and to any emergency and temporary amendments to that act shall remain in force until repealed or superseded.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2016”.

Sec. 2. An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat 976; D.C. Official Code § 32-1301 et seq.), is amended as follows:

(a) Section 1 (D.C. Official Code § 32-1301) is amended as follows:

   (1) Paragraph (1) is designated paragraph (1B).

   (2) New paragraphs (1) and (1A) are added to read as follows:


   “(1A) "Attorney General" means the Attorney General for the District of Columbia, as established by section 435 of the District of Columbia Home Rule Act, effective May 28, 2011 (D.C. Law 18-160A; D.C. Official Code § 1-204.35).”.

(b) Section 2 (D.C. Official Code § 32-1302) is amended by striking the phrase “Every employer shall pay all wages earned to his employees at least twice during each calendar month, on regular paydays designated in advance by the employer;” and inserting the phrase “An employer shall pay all wages earned to his or her employees on regular paydays designated in advance by the employer and at least twice during each calendar month; except, that all bona fide administrative, executive, and professional employees (those employees employed in a bona fide
administrative, executive, or professional capacity, as defined in section 7-999.1 of the District
of Columbia Municipal Regulation (7 DCMR 999.1), shall be paid at least once per month;” in
its place.

(c) Section 3 (D.C. Official Code § 32-1303) is amended as follows:

(1) Paragraph 5 is amended to read as follows:

“(5) A subcontractor, including any intermediate subcontractor, and the general
contractor shall be jointly and severally liable to the subcontractor’s employees for the
subcontractor’s violations of this act, the Living Wage Act, and the Sick and Safe Leave Act.
Except as otherwise provided in a contract between the subcontractor and the general contractor,
the subcontractor shall indemnify the general contractor for any wages, damages, interest,
penalties, or attorneys’ fees owed as a result of the subcontractor’s violations of this act, the
Living Wage Act, and the Sick and Safe Leave Act, unless those violations were due to the lack
of prompt payment in accordance with the terms of the contract between the general contractor
and the subcontractor.”.

(2) Paragraph 6 is amended by striking phrase “Unless otherwise agreed to by the
parties, the temporary staffing firm shall indemnify the employer as a result of the temporary
staffing firm’s violations” and inserting the phrase “Except as otherwise provided in a contract
between the temporary staffing firm and its client, the temporary staffing firm shall indemnify its
client for any wages, damages, interest, penalties, or attorneys’ fees owed as a result of the
temporary staffing firm’s violations” in its place.

(d) Section 6 (D.C. Official Code § 32-1306) is amended as follows:

(1) Subsection (a)(2) is amended to read as follows:
“(2)(A) The Attorney General, acting in the public interest, including the need to deter future violations, may bring a civil action in a court of competent jurisdiction against an employer or other person violating this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act for restitution, injunctive, compensatory, and other authorized relief for any individual or for the public at large. Upon prevailing in court, the Attorney General shall be entitled to:

“(i) Reasonable attorneys’ fees and costs;

“(ii) Statutory penalties equal to any administrative penalties provided by law; and

“(iii) On behalf of an aggrieved employee, the payment of back wages unlawfully withheld, additional liquidated damages equal to treble the back wages unlawfully withheld, and equitable relief as may be appropriate.

“(B) The Attorney General shall not, in any action brought pursuant to this section, be awarded an amount already recovered by an employee.”.

(2) Subsection (b) is amended as follows:

(i) The existing text is designated paragraph (1).

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

“(2) The Attorney General shall have the power to investigate whether there are violations of this act, the Living Wage Act, the Sick and Safe Leave Act, and the Minimum Wage Revision Act, and administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony and to take depositions and affidavits in connection with any such investigation.”.
(2) Subsection (c) is amended to read as follows:

"(c) Any person to whom a subpoena authorized by this section has been issued shall have the opportunity to move to quash or modify the subpoena in the Superior Court of the District of Columbia. In case of failure of any person to comply with any subpoena lawfully issued under this section, or on the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, it shall be the duty of the Superior Court of the District of Columbia or any judge thereof, on application by the Mayor or the Attorney General, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such Court or a refusal to testify therein."

(3) New subsections (d) and (e) are added to read as follows:

"(d)(1) Every employer subject to any provision of this act or of any regulation or order issued pursuant to this act shall make, keep, and preserve, for a period of not less than 3 years or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this act, whichever is greater, a record of:

(A) The name, address, and occupation of each employee;

(B) A record of the date of birth of any employee under 19 years of age;

(C) The rate of pay and the amount paid each pay period to each employee;

(D) The precise time worked each day and each workweek by each employee, except for employees who are not paid on an hourly basis and who are exempt from the minimum wage and overtime requirements under section 5(a) of the Minimum Wage

"(E) Any other records or information as the Mayor shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this act or of the regulations issued pursuant to this act.

"(2)(A) Any records shall be open and made available for inspection or transcription by the Mayor, the Mayor’s authorized representative, or the Office of Attorney General upon demand at any reasonable time. An employer shall furnish to the Mayor, the Mayor’s authorized representative, or the Office of the Attorney General on demand a sworn statement of records and information upon forms prescribed or approved by the Mayor or Attorney General.

"(B) No employer may be found to be in violation of subparagraph (A) of this paragraph unless the employer had an opportunity to challenge the Mayor or Attorney General’s demand before a judge, including an administrative law judge.

"(e) Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the date of the wage payment, gross wages paid, deductions from and additions to wages, net wages paid, hours worked during the pay period, and any other information as the Mayor may prescribe by regulation.”.

(e) Section 7(a) (D.C. Official Code § 32-1307(a)) is amended to read as follows:

“(a)(1) An employer who negligently fails to comply with the provisions of this title or the Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall be fined:

“(A) For the first offense, an amount per affected employee of not more than $2,500;
“(B) For any subsequent offense, an amount per affected employee of not more than $5,000.

“(2) An employer who willfully fails to comply with the provisions of this title or the Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall:

“(A) For the first offense, be fined not more than $5,000 per affected employee, or imprisoned not more than 30 days; or

“(B) For any subsequent offense, be fined not more than $10,000 per affected employee, or imprisoned not more than 90 days.

“(3) The fines set forth in paragraphs (1) and (2) of this subsection shall not be limited by section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01).”.

(f) Section 8 (D.C. Official Code § 32-1308) is amended as follows:

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

“(a)(1)(A) Subject to subparagraph (B) of this paragraph, a person aggrieved by a violation of this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act may bring a civil action in a court of competent jurisdiction against the employer or other person violating this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act and, upon prevailing, shall be awarded reasonable attorneys’ fees and costs and entitled to restitution including:

“(i) The payment of any back wages unlawfully withheld;

“(ii) Liquidated damages equal to treble the amount of unpaid wages;

“(iii) Statutory penalties; and
“(iv) Such legal or equitable relief as may be appropriate, including reinstatement of employment, and other injunctive relief.

“(B) No person in any action brought pursuant to this section shall be awarded any amount already recovered by an employee.

“(C) Actions may be maintained by one or more employees, who may designate an agent or representative to maintain the action for themselves, or on behalf of all employees similarly situated as follows:

“(i) Individually by an aggrieved person;

“(ii) Jointly by one or more aggrieved persons;

“(iii) Consistent with the collective action procedures of the Fair Labor Standards Act, 29 U.S.C. § 216(b);

“(iv) As a class action;

“(v) Initially as a collective action pursuant to the procedures of the Fair Labor Standards Act, 29 U.S.C. § 216(b), and subsequently as a class action;

“(vi) By a labor organization or association of employees whose member is aggrieved by a violation of this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act; or

“(vii) By the Office of Attorney General for the District of Columbia, pursuant to section 6.”.

(2) Subsection (b)(4) is amended by striking the word “Mayor” and inserting the word “District” in its place.

(g) Section 8a (D.C. Official Code § 32-1308.01) is amended as follows:
(1) Subsection (a) is amended by striking the phrase “A signed complaint” and
inserting the phrase “A physically or electronically signed complaint” in its place.

(2) Subsection (c) is amended as follows:

(A) Paragraph (1) is amended by striking the word “deliver” and inserting
the word “serve” in its place.

(B) Paragraph (2) is amended by striking the word “receipt” and inserting
the phrase “receipt of service” in its place.

(C) Paragraph (3) is amended by striking the word “mailed” and inserting
the word “served” in its place.

(D) Paragraph (4) is amended to read as follows:

“(4) If a respondent admits the allegation, the Mayor shall issue an administrative
order requiring the respondent to provide restitution, including the payment of any back wages
unlawfully withheld, liquidated damages equal to treble the amount of unpaid wages, statutory
penalties, reasonable attorney fees and costs, and such other legal or equitable relief as may be
appropriate, including reinstatement in employment, and other injunctive relief. The Mayor or
Attorney General may also proceed with any audit or subpoena to determine if the rights of
employees other than the complainant have also been violated.”.

(E) Paragraph (5) is amended by striking the word “mailed” and inserting
the word “served” in its place.

(F) Paragraph (6) is amended as follows:

(i) Strike the word “delivered” and insert the word “served” in its
place.
(ii) Strike the phrase “pay any unpaid wages, compensation, liquidated damages, and fine or penalty owed and requiring the respondent to cure any violations.” and insert the phrase “provide restitution including the payment of any back wages unlawfully withheld, liquidated damages equal to treble the amount of unpaid wages, statutory penalties, reasonable attorney fees and costs, such other legal or equitable relief as may be appropriate, including reinstatement in employment, and other injunctive relief.” in its place.

(G) Paragraph (7) is amended to read as follows:

“(7) The Mayor shall issue an initial determination within 60 days after the date the complaint is served. The initial determination shall set forth a brief summary of the evidence considered, the findings of fact, the conclusions of law, and an order requiring the respondent to provide restitution, including the payment of any back wages unlawfully withheld, liquidated damages equal to treble the amount of unpaid wages, statutory penalties, reasonable attorney fees and costs, such other legal or equitable relief as may be appropriate, including reinstatement in employment, and other injunctive relief. The initial determination shall be provided to both parties and set forth the losing party’s right to appeal under this section or to seek other relief available under this act.”.

(H) Paragraph (9) is amended by striking the word “filing” and inserting the word “serving” in its place.

(3) Subsection (e)(1) is amended by striking the phrase “administrative law judge shall issue an order based on the findings from the hearing. The”.

(4) Subsection (f)(2) is amended read as follows

“(2) Appropriate relief shall include the payment of any back wages unlawfully withheld, liquidated damages equal to treble the amount of unpaid wages, statutory penalties,
reasonable attorney fees and costs, such other legal or equitable relief as may be appropriate, including reinstatement in employment, and other injunctive relief.”.

(5) Subsection (m)(4) is amended by striking the word “Mayor” and inserting the word “District” in its place.

(6) A new subsection (n) is added to read as follows:

“(n) Appeals of any order issued or fine assessed under this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act shall be made to the District of Columbia Court of Appeals.”.

(h) A new section 8b is added to read as follows:

“Sec. 8b. Interpretation of fees.

No inference shall be drawn, or precedent established, based on the provisions in section 8 or section 8a that provide that attorney fees shall be calculated pursuant to the matrix approved in Salazar v. District of Columbia, 123 F.Supp.2d 8 (D.D.C. 2000) that such fees are reasonable for any law other than this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act.”.

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

“Sec. 10b. Rules.

“The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall issue rules to implement the provisions of this title.”.

(j) Section 212(a) (D.C. Official Code § 32-1331.12(a)) is amended by striking the phrase “3 years, in or about its place of business,” and inserting the phrase “3 years or the prevailing
federal standard at the time the record is created, which shall be identified in rules issued
pursuant to this act, whichever is greater, in or about its place of business,” in its place.

Sec. 3. The Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C.
Law 9-248; D.C. Official Code § 32-1001 et seq.), is amended as follows:

(a) Section 5(b) (D.C. Official Code § 32-1004(b)) is amended as follows:

(1) Paragraph (3) is amended by adding the word “or” at the end.

(2) Paragraph (5) is repealed.

(b) Section 8 (D.C. Official Code § 32-1007) is amended to read as follows:

"The Mayor and the Attorney General shall each have the power to administer oaths and
require by subpoena the attendance and testimony of witnesses, the production of all books,
registers, and other evidence relative to any matters under investigation, at any public hearing, or
at any meeting of any committee or for the use of the Mayor or the Attorney General in securing
compliance with this act. In case of disobedience to a subpoena, the Mayor or the Attorney
General may invoke the aid of the Superior Court of the District of Columbia to require the
attendance and testimony of witnesses and the production of documentary evidence. In case of
contumacy or refusal to obey a subpoena, the Court may issue an order to require an appearance
before the Mayor or the Attorney General, the production of documentary evidence, and the
giving of evidence. Any person or entity to whom a subpoena has been issued may move to
quash or modify the subpoena, and any failure to obey the order of the Court may be punished by
the Court as contempt."

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

(1) Subsection (a) is amended as follows:

(A) Paragraph (1) is amended as follows:
(i) The lead-in language is amended striking the phrase “or whatever the prevailing federal standard is,” and inserting the phrase “or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this act,” in its place.

(ii) Subparagraph (D) is amended to read as follows:

“(D) The precise times worked each day and each workweek by each employee, except for employees who are not paid on an hourly basis and who are exempt from the minimum wage and overtime requirements under section 5(a); and”.

(B) Paragraph (2) is amended to read as follows:

“(2)(A) Any records shall be open and made available for inspection or transcription by the Mayor, the Mayor’s authorized representative, or the Office of Attorney General upon demand at any reasonable time. An employer shall furnish to the Mayor, the Mayor’s authorized representative, or the Office of the Attorney General on demand a sworn statement of records and information upon forms prescribed or approved by the Mayor or Attorney General.

“(B) No employer may be found to be in violation of subparagraph (A) of this paragraph unless the employer had an opportunity to challenge the Mayor or Attorney General’s demand before a judge, including an administrative law judge.”.

(2) Subsection (c) is amended by striking the phrase “shall furnish to each employee at the time of hiring a written notice, both in English and in the employee’s primary language, containing the following information:” and inserting the phrase “shall furnish to each employee at the time of hiring, and whenever any of the information contained in the written notice changes, a written notice in English; provided, that if the Mayor has made a sample
template available in a language other than English that the employer knows to be the
employee's primary language or that the employee requests, the employer shall furnish the
written notice to the employee in that other language also. The notice required by this subsection
shall contain:” in its place.

(3) Subsection (d) is amended as follows:

(A) Paragraph (1) is amended to read as follows:

“(l)(A) Within 90 days of February 26, 2015, and within 30 days of any change to
the information contained in the prior written notice, an employer, except in those instances
where notice is provided pursuant to section 9a, shall furnish each employee with an updated
notice containing the information required under subsection (c) of this section in English and in
any additional language required by subsection (c) of this section.

“(B) To show proof of compliance with these notice requirements, an
employer shall retain either copies of the written notice furnished to employees that are signed
and dated by the employer and by the employee acknowledging receipt or electronic records
demonstrating that the employee received and acknowledged the notice via email or other
electronic means.”.

(B) Paragraph (3) is amended by striking the phrase “subsections (b) and
(c) of”.

(4) Subsection (e) is amended adding a sentence at the end to read as follows:

“On or before February 26, 2017, the Mayor also shall publish online a translation of the
sample template in any languages required for vital documents pursuant to section 4 of the
2-1933). The Mayor shall also publish online translations of the sample template in any additional languages the Mayor considers appropriate to carry out the purposes of this section.”.

(d) Section 9a (D.C. Official Code § 32-1008.01) is amended as follows:

(1) Section (a)(1) is amended by adding a sentence at the end to read as follows:

“The notice shall be provided in English and, if the Mayor has made available a translation of the sample template in a language that is known by the temporary staffing firm to be the employee’s primary language or that the employee requests, the temporary staffing firm shall furnish written notice to the employee in that other language also.”.

(2) The lead-in language to subsection (b) is amended to read as follows:

“(b) When a temporary staffing firm assigns an employee to perform work at, or provide services for, a client, the temporary staffing firm shall furnish the employee a written notice in English, and in another language that the employer knows to be the employee’s primary language or that the employee requests, if a sample template has been made available pursuant to subsection (c) of this section, of:”.

(3) Subsection (c) is amended to read as follows:

“(c) On or before February 26, 2017, the Mayor shall publish online a translation of the sample template of the notice required by this section in any language required for vital documents pursuant to section 4 of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1933). The Mayor shall also publish online translations of the sample template in any additional languages the Mayor considers appropriate to carry out the purposes of this section.”.

(e) Section 12(d)(1)(C) (D.C. Official Code § 32-1011(d)(1)(C)) is amended by striking the phrase “or whatever the prevailing federal standard is, whichever is greater” and inserting the
phrase "or the prevailing federal standard at the time the record is created, which shall be
identified in rules issued pursuant to this act, whichever is greater," in its place.

(f) Section 12a (D.C. Official Code § 32-1011.01) is amended by striking the phrase
"liquidated damages of not less than $1,000 and not more than $10,000" and inserting the phrase
"all appropriate relief provided for under section 10a of An Act To provide for the payment and
collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat 979; D.C.
Official Code § 32-1311)" in its place.

(g) Section 13 (D.C. Official Code § 32-1012) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "according to" and inserting
the phrase "according to, and with all the remedies provided under," in its place.

(2) Subsection (b)(2) is amended by striking the phrase "The court may award an
amount of liquidated damages less than treble the amount of unpaid wages, but not less than the
amount of unpaid wages. In any action commenced to recover unpaid wages or liquidated
damages, the employer shall demonstrate" and inserting the phrase "The court may award an
additional amount of liquidated damages less than treble the amount of unpaid wages, but not
less than the amount of unpaid wages, only if the employer demonstrates" in its place.

(3) Subsection (c) is amended to read as follows:

"(c) A subcontractor, including any intermediate subcontractor, and the general
contractor shall be jointly and severally liable to the subcontractor’s employees for the
subcontractor’s violations of this act. Except as otherwise provided in a contract between the
subcontractor and the general contractor, the subcontractor shall indemnify the general contractor
for any wages, damages, interest, penalties, or attorneys’ fees owed as a result of the
subcontractor’s violations of this act, unless those violations were due to the lack of prompt
payment in accordance with the terms of the contract between the general contractor and the
subcontractor.”.

(4) Subsection (f) is amended to read as follows:

“(f)(1) When a temporary staffing firm employs an employee who performs work
on behalf of or to the benefit of a client pursuant to a temporary staffing arrangement or contract
for services, both the temporary staffing firm and the client shall be jointly and severally liable
for violations of this act to the employee and to the District.

“(2) The District, the employee, or the employee’s representative shall notify
the temporary staffing firm of the alleged violations at least 30 days before filing a claim for
these violations against a client who was not the employee’s direct employer.

“(3) Except as otherwise provided in a contract between the temporary
staffing firm and its client, the temporary staffing firm shall indemnify its client for any wages,
damages, interest, penalties, or attorneys’ fees owed as a result of the temporary staffing firm’s
violations of this act.”.

(h) Section 13a (D.C. Official Code § 32-1012.01) is amended to read as follows

“Administrative complaints filed for violations of this act shall be considered under the
same procedures and with all the same legal and equitable remedies available for violations of
Title I of An Act To provide for the payment and collection of wages in the District of Columbia,
approved August 3, 1956 (70 Stat 976; D.C. Official Code § 32-1301 et seq.).”.

Sec. 4. Conforming amendments.

(a) Section 11b(a) of the Accrued Sick and Safe Leave Act, effective February 22, 2014
(D.C. Law 20-89; D.C. Official Code § 32-131.10b(a)), is amended by striking the phrase “3
years” and inserting the phrase “3 years or the prevailing federal standard at the time the record
is created, which shall be identified in rules issued pursuant to this act, whichever is greater,” in its place.

(b) Section 107 of the Living Wage Act, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code § 2-220.07), is amended by striking the phrase “3 years from the payroll date” and inserting the phrase “3 years or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this act, whichever is greater, from the payroll date” in its place.

Sec. 5. Continuation of rules, forms, and regulations.

All rules, forms, and regulations issued pursuant to the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157), (“act”) and any rules, forms, and regulations issued pursuant to the act, including the Wage Theft Prevention Clarification Temporary Amendment Act of 2016, effective April 6, 2016 (D.C. Law 21-101; 63 DCR 2220), or the Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2016, enacted on October 4, 2016 (D.C. Act 21-493; 63 DCR 12600), or any like succeeding emergency and temporary acts, shall continue in effect according to their terms until lawfully amended, repealed, or superseded.

Sec. 6. Repealers.

(a) Section 7 of the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157), is repealed.

(b) The Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2016, enacted on October 4, 2016 (D.C. Act 21-493; 63 DCR 12600), is repealed.

(c) The Revised Wage Theft Prevention Clarification Emergency Amendment Act of 2016, passed on an emergency basis on November 1, 2016 (Enrolled Bill 21-928), is repealed.
(d) The Revised Wage Theft Prevention Clarification Temporary Amendment Act of 2016, passed on an emergency basis on November 1, 2016 (Engrossed Bill 21-929), is repealed.

Sec. 7. Fiscal impact statement.


Sec. 8. Effective date.

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

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend An Act To provide for the payment and collection of wages in the District of Columbia to clarify that Office of Administrative Hearings judges will hear wage theft cases, to exempt an employer from being required to pay wages to bona fide executive, administrative, and professional employees at least twice during each calendar month, to clarify that subcontractors include intermediate subcontractors, to clarify that general contractors and clients of temporary staffing agencies may waive their right to indemnification, to clarify that the Attorney General can bring civil enforcement actions in court and inspect business records, to incorporate record-keeping requirements from the Minimum Wage Act Revision Act, to allow businesses to challenge a demand for business records before a neutral decision-maker, to revise criminal penalties for violations of the act, to clarify the remedies and processes for civil and administrative actions to enforce wage theft laws, to clarify deadlines pertaining to service of wage theft complaints and that membership organizations may bring civil actions on behalf of their members, to clarify the Mayor's authority to issue rules, to require the Mayor to issue rules identifying relevant prevailing federal standards for record keeping requirements, to amend the Minimum Wage Act Revision Act of 1992 to remove the exclusion of parking lot and garage attendants from receiving the protections of the District's minimum and overtime laws, to require the Mayor to issue rules identifying relevant prevailing federal standards for record keeping requirements, to exempt employers from keeping precise time records for bona fide executive, administrative, professional non-hourly employees, to allow businesses to challenge a demand for business records before a neutral decision-maker, to clarify when an employer or a temporary staffing firm must provide notices to an employee in a second language, to require the Mayor to publish translations of notices and sample templates online in all the languages required by the Language Access Act, to clarify how the Mayor shall make certain information available to employers, to clarify that general contractors and clients of temporary staffing agencies may waive their right to indemnification, to clarify the remedies and procedures available in civil and administrative actions; to repeal an obsolete provision of the Wage Theft Prevention Amendment Act of 2014; to amend the Accrued Sick and Safe Leave Act of 2008 and the Living Wage Act of 2006 to require the Mayor to issue rules identifying relevant prevailing federal standards for record keeping requirements; and to provide that all rules,
forms, and regulations issued pursuant to the Wage Theft Prevention Amendment Act of 2014 and to any emergency and temporary amendments to that act shall remain in force until repealed or superseded.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2016”.

Sec. 2. An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat 976; D.C. Official Code § 32-1301 et seq.), is amended as follows:

(a) Section 1 (D.C. Official Code § 32-1301) is amended as follows:

   (1) Paragraph (1) is designated paragraph (1B).

   (2) New paragraphs (1) and (1A) are added to read as follows:


(b) Section 2 (D.C. Official Code § 32-1302) is amended by striking the phrase “Every employer shall pay all wages earned to his employees at least twice during each calendar month, on regular paydays designated in advance by the employer;” and inserting the phrase “An employer shall pay all wages earned to his or her employees on regular paydays designated in advance by the employer and at least twice during each calendar month; except, that all bona fide administrative, executive, and professional employees (those employees employed in a bona fide
administrative, executive, or professional capacity, as defined in section 7-999.1 of the District of Columbia Municipal Regulation (7 DCMR 999.1), shall be paid at least once per month;” in its place.

(c) Section 3 (D.C. Official Code § 32-1303) is amended as follows:

(1) Paragraph 5 is amended to read as follows:

“(5) A subcontractor, including any intermediate subcontractor, and the general contractor shall be jointly and severally liable to the subcontractor’s employees for the subcontractor’s violations of this act, the Living Wage Act, and the Sick and Safe Leave Act. Except as otherwise provided in a contract between the subcontractor and the general contractor, the subcontractor shall indemnify the general contractor for any wages, damages, interest, penalties, or attorneys’ fees owed as a result of the subcontractor’s violations of this act, the Living Wage Act, and the Sick and Safe Leave Act, unless those violations were due to the lack of prompt payment in accordance with the terms of the contract between the general contractor and the subcontractor.”.

(2) Paragraph 6 is amended by striking phrase “Unless otherwise agreed to by the parties, the temporary staffing firm shall indemnify the employer as a result of the temporary staffing firm’s violations” and inserting the phrase “Except as otherwise provided in a contract between the temporary staffing firm and its client, the temporary staffing firm shall indemnify its client for any wages, damages, interest, penalties, or attorneys’ fees owed as a result of the temporary staffing firm’s violations” in its place.

(d) Section 6 (D.C. Official Code § 32-1306) is amended as follows:

(1) Subsection (a)(2) is amended to read as follows:
“(2)(A) The Attorney General, acting in the public interest, including the need to deter future violations, may bring a civil action in a court of competent jurisdiction against an employer or other person violating this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act for restitution, injunctive, compensatory, and other authorized relief for any individual or for the public at large. Upon prevailing in court, the Attorney General shall be entitled to:

“(i) Reasonable attorneys’ fees and costs;
“(ii) Statutory penalties equal to any administrative penalties provided by law; and
“(iii) On behalf of an aggrieved employee, the payment of back wages unlawfully withheld, additional liquidated damages equal to treble the back wages unlawfully withheld, and equitable relief as may be appropriate.

“(B) The Attorney General shall not, in any action brought pursuant to this section, be awarded an amount already recovered by an employee.”.

(2) Subsection (b) is amended as follows:

(i) The existing text is designated paragraph (1).
(ii) A new paragraph (2) is added to read as follows:

“(2) The Attorney General shall have the power to investigate whether there are violations of this act, the Living Wage Act, the Sick and Safe Leave Act, and the Minimum Wage Revision Act, and administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony and to take depositions and affidavits in connection with any such investigation.”.
(2) Subsection (c) is amended to read as follows:

“(c) Any person to whom a subpoena authorized by this section has been issued shall have the opportunity to move to quash or modify the subpoena in the Superior Court of the District of Columbia. In case of failure of any person to comply with any subpoena lawfully issued under this section, or on the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, it shall be the duty of the Superior Court of the District of Columbia or any judge thereof, on application by the Mayor or the Attorney General, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such Court or a refusal to testify therein.”.

(3) New subsections (d) and (e) are added to read as follows:

“(d)(1) Every employer subject to any provision of this act or of any regulation or order issued pursuant to this act shall make, keep, and preserve, for a period of not less than 3 years or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this act, whichever is greater, a record of:

“(A) The name, address, and occupation of each employee;

“(B) A record of the date of birth of any employee under 19 years of age;

“(C) The rate of pay and the amount paid each pay period to each employee;

“(D) The precise time worked each day and each workweek by each employee, except for employees who are not paid on an hourly basis and who are exempt from the minimum wage and overtime requirements under section 5(a) of the Minimum Wage

“(E) Any other records or information as the Mayor shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this act or of the regulations issued pursuant to this act.

“(2)(A) Any records shall be open and made available for inspection or transcription by the Mayor, the Mayor’s authorized representative, or the Office of Attorney General upon demand at any reasonable time. An employer shall furnish to the Mayor, the Mayor’s authorized representative, or the Office of the Attorney General on demand a sworn statement of records and information upon forms prescribed or approved by the Mayor or Attorney General.

“(B) No employer may be found to be in violation of subparagraph (A) of this paragraph unless the employer had an opportunity to challenge the Mayor or Attorney General’s demand before a judge, including an administrative law judge.

“(e) Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the date of the wage payment, gross wages paid, deductions from and additions to wages, net wages paid, hours worked during the pay period, and any other information as the Mayor may prescribe by regulation.”.

(e) Section 7(a) (D.C. Official Code § 32-1307(a)) is amended to read as follows:

“(a)(l) An employer who negligently fails to comply with the provisions of this title or the Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall be fined:

“(A) For the first offense, an amount per affected employee of not more than $2,500;
“(B) For any subsequent offense, an amount per affected employee of not more than $5,000.

“(2) An employer who willfully fails to comply with the provisions of this title or the Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall:

“(A) For the first offense, be fined not more than $5,000 per affected employee, or imprisoned not more than 30 days; or

“(B) For any subsequent offense, be fined not more than $10,000 per affected employee, or imprisoned not more than 90 days.

“(3) The fines set forth in paragraphs (1) and (2) of this subsection shall not be limited by section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01).”.

(f) Section 8 (D.C. Official Code § 32-1308) is amended as follows:

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

“(a)(1)(A) Subject to subparagraph (B) of this paragraph, a person aggrieved by a violation of this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act may bring a civil action in a court of competent jurisdiction against the employer or other person violating this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act and, upon prevailing, shall be awarded reasonable attorneys’ fees and costs and entitled to restitution including:

“(i) The payment of any back wages unlawfully withheld;

“(ii) Liquidated damages equal to treble the amount of unpaid wages;

“(iii) Statutory penalties; and
“(iv) Such legal or equitable relief as may be appropriate, including reinstatement of employment, and other injunctive relief.

“(B) No person in any action brought pursuant to this section shall be awarded any amount already recovered by an employee.

“(C) Actions may be maintained by one or more employees, who may designate an agent or representative to maintain the action for themselves, or on behalf of all employees similarly situated as follows:

“(i) Individually by an aggrieved person;

“(ii) Jointly by one or more aggrieved persons;

“(iii) Consistent with the collective action procedures of the Fair Labor Standards Act, 29 U.S.C. § 216(b);

“(iv) As a class action;

“(v) Initially as a collective action pursuant to the procedures of the Fair Labor Standards Act, 29 U.S.C. § 216(b), and subsequently as a class action;

“(vi) By a labor organization or association of employees whose member is aggrieved by a violation of this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act; or

“(vii) By the Office of Attorney General for the District of Columbia, pursuant to section 6.”.

(2) Subsection (b)(4) is amended by striking the word “Mayor” and inserting the word “District” in its place.

(g) Section 8a (D.C. Official Code § 32-1308.01) is amended as follows:
(1) Subsection (a) is amended by striking the phrase “A signed complaint” and inserting the phrase “A physically or electronically signed complaint” in its place.

(2) Subsection (c) is amended as follows:

(A) Paragraph (1) is amended by striking the word “deliver” and inserting the word “serve” in its place.

(B) Paragraph (2) is amended by striking the word “receipt” and inserting the phrase “receipt of service” in its place.

(C) Paragraph (3) is amended by striking the word “mailed” and inserting the word “served” in its place.

(D) Paragraph (4) is amended to read as follows:

“(4) If a respondent admits the allegation, the Mayor shall issue an administrative order requiring the respondent to provide restitution, including the payment of any back wages unlawfully withheld, liquidated damages equal to the amount of unpaid wages, reasonable attorney fees and costs, and such other legal or equitable relief as may be appropriate, including reinstatement in employment, and other injunctive relief, and which may include statutory penalties. The Mayor or Attorney General may also proceed with any audit or subpoena to determine if the rights of employees other than the complainant have also been violated.”

(E) Paragraph (5) is amended by striking the word “mailed” and inserting the word “served” in its place.

(F) Paragraph (6) is amended as follows:

(i) Strike the word “delivered” and insert the word “served” in its place.
(ii) Strike the phrase “pay any unpaid wages, compensation, liquidated damages, and fine or penalty owed and requiring the respondent to cure any violations.” and insert the phrase “provide restitution including the payment of any back wages unlawfully withheld, liquidated damages equal to treble the amount of unpaid wages, statutory penalties, reasonable attorney fees and costs, such other legal or equitable relief as may be appropriate, including reinstatement in employment, and other injunctive relief.” in its place.

(G) Paragraph (7) is amended to read as follows:

“(7) The Mayor shall issue an initial determination within 60 days after the date the complaint is served. The initial determination shall set forth a brief summary of the evidence considered, the findings of fact, the conclusions of law, and an order requiring the respondent to provide restitution, including the payment of any back wages unlawfully withheld, liquidated damages equal to treble the amount of unpaid wages, statutory penalties, reasonable attorney fees and costs, such other legal or equitable relief as may be appropriate, including reinstatement in employment, and other injunctive relief. The initial determination shall be provided to both parties and set forth the losing party’s right to appeal under this section or to seek other relief available under this act.”.

(H) Paragraph (9) is amended by striking the word “filing” and inserting the word “serving” in its place.

(3) Subsection (e)(1) is amended by striking the phrase “administrative law judge shall issue an order based on the findings from the hearing. The”.

(4) Subsection (f)(2) is amended read as follows

“(2) Appropriate relief shall include the payment of any back wages unlawfully withheld, liquidated damages equal to treble the amount of unpaid wages, statutory penalties,
reasonable attorney fees and costs, such other legal or equitable relief as may be appropriate, including reinstatement in employment, and other injunctive relief.”.

(5) Subsection (m)(4) is amended by striking the word “Mayor” and inserting the word “District” in its place.

(6) A new subsection (n) is added to read as follows:

“(n) Appeals of any order issued or fine assessed under this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act shall be made to the District of Columbia Court of Appeals.”.

(h) A new section 8b is added to read as follows:

“Sec. 8b. Interpretation of fees.

No inference shall be drawn, or precedent established, based on the provisions in section 8 or section 8a that provide that attorney fees shall be calculated pursuant to the matrix approved in *Salazar v. District of Columbia*, 123 F.Supp.2d 8 (D.D.C. 2000) that such fees are reasonable for any law other than this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act.”.

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

“Sec. 10b. Rules.

“The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall issue rules to implement the provisions of this title.”.

(j) Section 212(a) (D.C. Official Code § 32-1331.12(a)) is amended by striking the phrase “3 years, in or about its place of business,” and inserting the phrase “3 years or the prevailing
federal standard at the time the record is created, which shall be identified in rules issued
pursuant to this act, whichever is greater, in or about its place of business,” in its place.
Sec. 3. The Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C.
Law 9-248; D.C. Official Code § 32-1001 et seq.), is amended as follows:
(a) Section 5(b) (D.C. Official Code § 32-1004(b)) is amended as follows:
(1) Paragraph (3) is amended by adding the word “or” at the end.
(2) Paragraph (5) is repealed.
(b) Section 8 (D.C. Official Code § 32-1007) is amended to read as follows:
“The Mayor and the Attorney General shall each have the power to administer oaths and
require by subpoena the attendance and testimony of witnesses, the production of all books,
registers, and other evidence relative to any matters under investigation, at any public hearing, or
at any meeting of any committee or for the use of the Mayor or the Attorney General in securing
compliance with this act. In case of disobedience to a subpoena, the Mayor or the Attorney
General may invoke the aid of the Superior Court of the District of Columbia to require the
attendance and testimony of witnesses and the production of documentary evidence. In case of
contumacy or refusal to obey a subpoena, the Court may issue an order to require an appearance
before the Mayor or the Attorney General, the production of documentary evidence, and the
giving of evidence. Any person or entity to whom a subpoena has been issued may move to
quash or modify the subpoena, and any failure to obey the order of the Court may be punished by
the Court as contempt.”.
(c) Section 9 (D.C. Official Code § 32-1008) is amended as follows:
(1) Subsection (a) is amended as follows:
(A) Paragraph (1) is amended as follows:
(i) The lead-in language is amended striking the phrase “or whatever the prevailing federal standard is,” and inserting the phrase “or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this act,” in its place.

(ii) Subparagraph (D) is amended to read as follows:

“(D) The precise times worked each day and each workweek by each employee, except for employees who are not paid on an hourly basis and who are exempt from the minimum wage and overtime requirements under section 5(a); and”.

(B) Paragraph (2) is amended to read as follows:

“(2)(A) Any records shall be open and made available for inspection or transcription by the Mayor, the Mayor’s authorized representative, or the Office of Attorney General upon demand at any reasonable time. An employer shall furnish to the Mayor, the Mayor’s authorized representative, or the Office of the Attorney General on demand a sworn statement of records and information upon forms prescribed or approved by the Mayor or Attorney General.

“(B) No employer may be found to be in violation of subparagraph (A) of this paragraph unless the employer had an opportunity to challenge the Mayor or Attorney General’s demand before a judge, including an administrative law judge.”.

(2) Subsection (c) is amended by striking the phrase “shall furnish to each employee at the time of hiring a written notice, both in English and in the employee’s primary language, containing the following information:” and inserting the phrase “shall furnish to each employee at the time of hiring, and whenever any of the information contained in the written notice changes, a written notice in English; provided, that if the Mayor has made a sample
template available in a language other than English that the employer knows to be the
employee’s primary language or that the employee requests, the employer shall furnish the
written notice to the employee in that other language also. The notice required by this subsection
shall contain:” in its place.

(3) Subsection (d) is amended as follows:

(A) Paragraph (1) is amended to read as follows:

“(l)(A) Within 90 days of February 26, 2015, and within 30 days of any change to
the information contained in the prior written notice, an employer, except in those instances
where notice is provided pursuant to section 9a, shall furnish each employee with an updated
notice containing the information required under subsection (c) of this section in English and in
any additional language required by subsection (c) of this section.

“(B) To show proof of compliance with these notice requirements, an
employer shall retain either copies of the written notice furnished to employees that are signed
and dated by the employer and by the employee acknowledging receipt or electronic records
demonstrating that the employee received and acknowledged the notice via email or other
electronic means.”.

(B) Paragraph (3) is amended by striking the phrase “subsections (b) and
(c) of”.

(4) Subsection (e) is amended adding a sentence at the end to read as follows:

“On or before February 26, 2017, the Mayor also shall publish online a translation of the
sample template in any languages required for vital documents pursuant to section 4 of the
2-1933). The Mayor shall also publish online translations of the sample template in any additional languages the Mayor considers appropriate to carry out the purposes of this section.”.

(d) Section 9a (D.C. Official Code § 32-1008.01) is amended as follows:

(1) Section (a)(1) is amended by adding a sentence at the end to read as follows:

“The notice shall be provided in English and, if the Mayor has made available a translation of the sample template in a language that is known by the temporary staffing firm to be the employee’s primary language or that the employee requests, the temporary staffing firm shall furnish written notice to the employee in that other language also.”.

(2) The lead-in language to subsection (b) is amended to read as follows:

“(b) When a temporary staffing firm assigns an employee to perform work at, or provide services for, a client, the temporary staffing firm shall furnish the employee a written notice in English, and in another language that the employer knows to be the employee’s primary language or that the employee requests, if a sample template has been made available pursuant to subsection (c) of this section, of:”.

(3) Subsection (c) is amended to read as follows:

“(c) On or before February 26, 2017, the Mayor shall publish online a translation of the sample template of the notice required by this section in any language required for vital documents pursuant to section 4 of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1933). The Mayor shall also publish online translations of the sample template in any additional languages the Mayor considers appropriate to carry out the purposes of this section.”.

(e) Section 12(d)(1)(C) (D.C. Official Code § 32-1011(d)(1)(C)) is amended by striking the phrase “or whatever the prevailing federal standard is, whichever is greater” and inserting the
phrase "or the prevailing federal standard at the time the record is created, which shall be
identified in rules issued pursuant to this act, whichever is greater," in its place.

(f) Section 12a (D.C. Official Code § 32-1011.01) is amended by striking the phrase
"liquidated damages of not less than $1,000 and not more than $10,000" and inserting the phrase
"all appropriate relief provided for under section 10a of An Act To provide for the payment and
collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat 979; D.C.
Official Code § 32-1311)" in its place.

(g) Section 13 (D.C. Official Code § 32-1012) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "according to" and inserting
the phrase "according to, and with all the remedies provided under," in its place.

(2) Subsection (b)(2) is amended by striking the phrase "The court may award an
amount of liquidated damages less than treble the amount of unpaid wages, but not less than the
amount of unpaid wages. In any action commenced to recover unpaid wages or liquidated
damages, the employer shall demonstrate" and inserting the phrase "The court may award an
additional amount of liquidated damages less than treble the amount of unpaid wages, but not
less than the amount of unpaid wages, only if the employer demonstrates" in its place.

(3) Subsection (c) is amended to read as follows:

"(c) A subcontractor, including any intermediate subcontractor, and the general
contractor shall be jointly and severally liable to the subcontractor's employees for the
subcontractor's violations of this act. Except as otherwise provided in a contract between the
subcontractor and the general contractor, the subcontractor shall indemnify the general contractor
for any wages, damages, interest, penalties, or attorneys' fees owed as a result of the
subcontractor's violations of this act, unless those violations were due to the lack of prompt
payment in accordance with the terms of the contract between the general contractor and the subcontractor.”.

(4) Subsection (f) is amended to read as follows:

“(f)(1) When a temporary staffing firm employs an employee who performs work on behalf of or to the benefit of a client pursuant to a temporary staffing arrangement or contract for services, both the temporary staffing firm and the client shall be jointly and severally liable for violations of this act to the employee and to the District.

“(2) The District, the employee, or the employee’s representative shall notify the temporary staffing firm of the alleged violations at least 30 days before filing a claim for these violations against a client who was not the employee’s direct employer.

“(3) Except as otherwise provided in a contract between the temporary staffing firm and its client, the temporary staffing firm shall indemnify its client for any wages, damages, interest, penalties, or attorneys’ fees owed as a result of the temporary staffing firm’s violations of this act.”.

(h) Section 13a (D.C. Official Code § 32-1012.01) is amended to read as follows

“Administrative complaints filed for violations of this act shall be considered under the same procedures and with all the same legal and equitable remedies available for violations of Title I of An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat 976; D.C. Official Code § 32-1301 et seq.).”.

Sec. 4. Conforming amendments.

(a) Section 11b(a) of the Accrued Sick and Safe Leave Act, effective February 22, 2014 (D.C. Law 20-89; D.C. Official Code § 32-131.10b(a)), is amended by striking the phrase “3 years” and inserting the phrase “3 years or the prevailing federal standard at the time the record
is created, which shall be identified in rules issued pursuant to this act, whichever is greater," in
its place.

(b) Section 107 of the Living Wage Act, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code § 2-220.07), is amended by striking the phrase “3 years from the payroll date” and inserting the phrase “3 years or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this act, whichever is greater, from the payroll date” in its place.

(c) Paragraph 11 of section 105.3 of Title 12A of the District of Columbia Municipal Regulations (12A DCMR 105.3(11)) is amended as follows:

(1) Strike the phrase “general contractor or construction manager,” and insert the phrase “general contractor, construction manager, and each subcontractor,” in its place.

(2) Strike the phrase “general constructor or construction manager is selected” and insert the phrase “general contractor, construction manager, or any subcontractor is selected” in its place.

Sec. 5. Continuation of rules, forms, and regulations.

All rules, forms, and regulations issued pursuant to the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157), (“act”) and any rules, forms, and regulations issued pursuant to the act, including the Wage Theft Prevention Clarification Temporary Amendment Act of 2016, effective April 6, 2016 (D.C. Law 21-101; 63 DCR 2220), or the Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2016, enacted on October 4, 2016 (D.C. Act 21-493; 63 DCR 12600), or any like succeeding emergency and temporary acts, shall continue in effect according to their terms until lawfully amended, repealed, or superseded.
Sec. 6. Repealers.

(a) Section 7 of the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157), is repealed.

(b) The Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2016, enacted on October 4, 2016 (D.C. Act 21-493; 63 DCR 12600), is repealed.

(c) The Revised Wage Theft Prevention Clarification Emergency Amendment Act of 2016, passed on an emergency basis on November 1, 2016 (Enrolled Bill 21-928), is repealed.

(d) The Revised Wage Theft Prevention Clarification Temporary Amendment Act of 2016, passed on an emergency basis on November 1, 2016 (Engrossed Bill 21-929), is repealed.

Sec. 7. Fiscal impact statement.


Sec. 8. Effective date.

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