



Councilmember Elissa Silverman

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To require, on an temporary basis, employers to adopt and implement social distancing policies that require employees to wear personal protective equipment in the workplace, to require employers to provide employees with personal protective equipment, to permit employers to require that employees inform their employers of a positive test for an active COVID-19 infection, to prohibit retaliation against an employee who refuses to work with or serve an individual who refuses to social distance or wear personal protective equipment, to prohibit retaliation against an employee because the employee tests positive for, is quarantining because of COVID-19, or is caring for someone who has symptoms of or is quarantining because of COVID-19, and to prohibit retaliation against an employee who attempts to exercise any right or protection under Title I or to stop or prevent a violation of the worker safety provisions of Title I, to authorize the Mayor and Attorney General to administer and enforce workplace and employee protections in Title I, and the Attorney General to bring civil actions in a court of competent jurisdiction; and to amend the Small and Certified Business Enterprise Act of 2005 to authorize the Mayor to issue grants for small businesses to purchase or receive reimbursements for the purchase of personal protective equipment for their employees.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Protecting Businesses and Workers from COVID-19 Temporary Amendment Act of 2020”.

TITLE I. COVID-19 WORKPLACE SAFETY PROTECTIONS

Sec. 101. Definitions.

For the purposes of this title, the term:

40 (1) “Adverse employment action” means an action that an employer takes against
41 an employee, including a threat, verbal warning, written warning, reduction of work hours,
42 suspension, termination, discharge, demotion, harassment, material change in the terms or
43 conditions of the employee’s employment, or any action that is reasonably likely to deter the
44 employee from attempting to secure any right or protection contained in this title or to prevent or
45 stop a violation of this title.

46 (2) “Active COVID-19 infection” means an infection confirmed by a diagnostic
47 test for COVID-19 and not an antibody test.

48 (3) “COVID-19” means the disease caused by the novel coronavirus SARS-CoV-2.

49 (4) “Employee” includes any person suffered or permitted to work by an employer.

50 (5) “Employer” includes every individual, partnership, firm, general contractor,
51 subcontractor, association, corporation, the legal representative of a deceased individual, or the
52 receiver, trustee, or successor of an individual, firm, partnership, general contractor,
53 subcontractor, association, or corporation, employing any person in the District of Columbia.
54 The term “employer” shall include the District government or a quasi-governmental agency. The
55 term “employer” shall not include the United States government or its agencies.

56 (6) “Face covering” means a cloth face covering, face mask, or similar textile
57 barrier that covers an individual’s nose and mouth and works to reduce the spray of respiratory
58 droplets.

59 (7) “Face shield” means a form of personal protective equipment made of
60 transparent, impermeable materials intended to protect the entire face or portions of it from
61 droplets or splashes.

62 (8) “Hand sanitizer” means alcohol-based hand sanitizer that is at least 60%
63 alcohol.

64 (9) “Personal protective equipment” includes face coverings, disposable gloves,
65 eye protection, face shields, disposable gowns or aprons, and plexiglass barriers.

66 (10) “PPE” means personal protective equipment.

67 (11) “Public health emergency” means the Coronavirus (COVID-19) public
68 health emergency declared pursuant to Mayor’s Order 2020-045, on March 11, 2020, and all
69 subsequent extensions.

70 (12) “Wear a face covering” means to cover both nose and mouth.

71 (13) “Workplace” means any physical structure or space, over which an employer
72 maintains control, wherein an employee performs work for an employer; workplace does not
73 include the home of an employee who teleworks.

74 Sec. 102. Employer policies and workplace protections.

75 (a) Beginning 7 days after the effective date of this title and during the public health
76 emergency, employers in the District shall adopt and implement social distancing and worker
77 protection policies to prevent transmission of COVID-19 in the workplace. For employees that
78 are present in the workplace, employers shall:

79 (1) Require employees to maintain at least 6 feet of distance from other
80 individuals in the workplace, unless the nature of the employee’s job makes it impossible or
81 infeasible to maintain such a distance;

82 (2)(A)(i) Provide to each employee, unless the employee voluntarily supplies and
83 wears a self-supplied face covering:

84 (I) At least two washable cloth face masks at least every 3
85 months; or

86 (II) A new, disposable face mask for each day of work; and

87 (ii) In addition to the face masks provided pursuant to sub-
88 subparagraph (i) of this sub-paragraph, for each employee whose regular job duties make it
89 likely that the employee will be unable to maintain a distance of at least 6 feet from another
90 individual while performing such duties and the employee is required to remain at a stationary
91 post:

92 (I) Install a clear barrier of plexiglass or similar material
93 between the employee and the individuals with whom the employee regularly interacts at a
94 distance of fewer than 6 feet; or

95 (II) Provide the employee with eye protection such as a
96 face shield or safety goggles; and

97 (B) Except as provided in paragraph (5)(A) through (K) of this subsection,
98 require, at minimum, employees to wear the cloth face coverings or face masks provided
99 pursuant to subparagraph (A) of this paragraph whenever the employee is or is likely to be fewer
100 than 6 feet from another individual;

101 (3) Provide employees access to and permission to regularly use soap and water,
102 when possible, and hand sanitizer;

103 (4) Provide visitors to the workplace access to hand sanitizer; and

104 (5) Require, at minimum, customers, contractors, vendors, and other visitors to
105 the workplace to properly wear face coverings whenever they are or are likely to be fewer than 6

106 feet from another individual, provided, that the following persons are not required to wear face
107 coverings:

108 (A) A child under the age of 2 years old;

109 (B) A person who is unable to wear a mask due to a medical condition or
110 disability, or is physically unable to remove a mask;

111 (C) A person when speaking to a person who is deaf or hard of hearing
112 and who needs to read the speakers' lips;

113 (D) A person who is unconscious, incapacitated, or otherwise unable to
114 take off the face covering without assistance;

115 (E) A person who is eating or drinking;

116 (F) A person is in the water at a swimming pool;

117 (G) A person is in an enclosed office that no one else is permitted to enter;

118 (H) A person is giving a speech for broadcast or an audience, provided no
119 one is within six feet of the speaker;

120 (I) A person whose equipment required for a job precludes the wearing of
121 a mask and the person is wearing that equipment, or when wearing a mask would endanger
122 public safety;

123 (J) a person has been lawfully asked to remove the mask for facial
124 recognition purposes;

125 (K) A person who is participating in vigorous exercise at an outdoor
126 facility or a portion of an indoor facility that is outside and who is at least 6 feet from other
127 persons; or

128 (L) A person who is participating in vigorous exercise inside of a facility
129 and who is at least 10 feet from other persons.

130 (b)(1) An employer may establish a workplace policy to require an employee to report to
131 the employer a positive test for an active COVID-19 infection.

132 (2) An employer may not disclose the identity of an employee who tests positive
133 except to the Department of Health or another District or federal agency responsible for and
134 engaged in contact tracing and the containment of community spread of COVID-19.

135 Sec. 103. Retaliation prohibited.

136 (a) No employer or agent thereof may take an adverse employment action against an
137 employee for the employee's refusal to serve a customer or client, or to work within 6 feet of an
138 individual, who is not complying with the workplace protections in section 102.

139 (b)(1) No employer or agent thereof may take an adverse employment action against an
140 employee because:

141 (A) The employee tested positive for COVID-19; provided, that the
142 employee did not physically report to the workplace after receiving a positive test result;

143 (B) The employee was exposed to someone with COVID-19 and needs to
144 quarantine;

145 (C) The employee is sick and is waiting for a COVID-19 test result; or

146 (D) The employee is caring for or seeks to provide care for someone who
147 is sick with COVID-19 symptoms or who is quarantined.

148 (2) Nothing in this title prohibits an employer from requiring an employee who
149 has tested positive for COVID-19 to refrain from entering the workplace until a medical

150 professional has cleared the employee to return to the workplace or until a period of quarantine
151 recommended by the Department of Health or Centers for Disease Control has elapsed.

152 (c) No employer or agent thereof may take an adverse employment action against an
153 employee because of actions the employee takes to secure any right or protection contained in
154 this title or to prevent or stop a violation of this title.

155 Sec. 104. Enforcement.

156 (a)(1) The Mayor may enforce and administer this title by conducting investigations (of
157 the Mayor's own volition or after receiving a complaint), holding hearings, and assessing
158 penalties. The Mayor shall have the power to administer oaths and examine witnesses under
159 oath, issue subpoenas, compel the attendance of witnesses, compel the production of papers,
160 books, accounts, records, payrolls, documents, and testimony, and to take depositions and
161 affidavits in any proceedings before them.

162 (2) The Mayor may assess administrative penalties in the following amounts:

163 (A) For violations of section 102, up to \$50 per violation per employee per
164 day for a repeated or willful violation.

165 (B) For violations of sections 103, up to \$500 per violation.

166 (b)(1) The Attorney General may enforce this title by conducting investigations (of the
167 Attorney General's own volition or after receiving a complaint) and instituting actions. The
168 Attorney General shall have the power to administer oaths and examine witnesses under oath,
169 issue subpoenas, compel the attendance of witnesses, compel the production of papers, books,
170 accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in
171 any investigation or proceeding conducted to enforce this title.

172 (2) The Attorney General, acting in the public interest, including the need to deter
173 future violations, may enforce this title by commencing a civil action in the name of the District
174 of Columbia in a court of competent jurisdiction on behalf of the District or one or more
175 aggrieved employees.

176 (3) Upon prevailing in court after commencing a civil action as permitted by this
177 subsection, the Attorney General shall be entitled to:

178 (A) Reasonable attorneys' fees and costs;

179 (B) Statutory penalties in amount not greater than the maximum
180 administrative penalties provided under subsection (a) of this section; and

181 (C) On behalf of an aggrieved employee, the payment of lost wages; and

182 (D) Equitable relief as may be appropriate.

183 Sec. 105. Preemption.

184 (a) This title shall only apply to the conduct of employers and employees in the District to
185 the extent it does not conflict with or is not preempted by federal law, regulation, or standard.

186 (b) To the extent a Mayor's Order issued pursuant to sections 5 and 5a of the District of
187 Columbia Public Emergency Act of 1980, effective March 5, 1981 (D.C. Law 3-149, D.C.
188 Official Code §§ 7-2304, 7-2304.01), is related to the wearing of personal protective equipment
189 and requires employers, employees, or other individuals to adhere to stricter safety standards,
190 policies, or protocols than those required under section 102, the Mayor's Order shall control.

191 TITLE II. PERSONAL PROTECTIVE EQUIPMENT GRANT PROGRAM

192 Sec 201. The Small and Certified Business Enterprise Development and Assistance Act
193 of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*), is
194 amended as follows:

195 (a) The table of contents is amended by adding a new section designation to read as
196 follows:

197 “Sec. 2317. Personal Protective Equipment emergency grant program.”.

198 (b) A new section 2317 is added to read as follows:

199 “Sec. 2317. Personal protective equipment grant program.

200 “(a)(1) Beginning October 1, 2020, during the public health emergency, and subject to
201 the availability of funds, the Mayor may, notwithstanding the Grant Administration Act of 2013,
202 effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code § 1-328.11 *et seq.*), issue a
203 grant to an eligible small business; provided, that the eligible small business:

204 “(A) Submits a grant application in the form and with the information
205 required by the Mayor;

206 “(B) Submits a clear statement describing the type and quantities of PPE
207 purchased or to be purchased; and

208 “(C) Demonstrates, to the satisfaction of the Mayor, financial distress
209 caused by a reduction in business revenue due to the circumstances giving rise to or resulting
210 from the public health emergency.

211 “(2) A grant issued pursuant to this section may be provided in an amount up to
212 \$1,000 per eligible small business for the purchase of or reimbursement for purchases of PPE
213 made on or after the enacted date of the Protecting Businesses and Workers from COVID-19
214 Emergency Amendment Act of 2020, enacted on July 28, 2020 (D.C. Act 23-___; 67 DCR ___).

215 “(b) The Mayor may issue one or more grants to a third-party grant-managing entity for
216 the purpose of administering the grant program and making subgrants on behalf of the Mayor in
217 accordance with the requirements of this section.

218 “(c) The Mayor, pursuant to section 105 of the District of Columbia Administrative
219 Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505), may
220 issue rules to implement the provisions of this section.

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

222 “(1) “Eligible small business” means a business enterprise eligible for
223 certification under section 2332 or a nonprofit entity.

224 “(2) “Public health emergency” means the Coronavirus (COVID-19) public health
225 emergency declared pursuant to Mayor’s Order 2020-045, on March 11, 2020, and all
226 subsequent extensions.

227 “(3) “PPE” means personal protective equipment, including face masks,
228 disposable gloves, face shields, and plexiglass barriers.”.

229 TITLE III. FISCAL IMPACT AND EFFECTIVE DATE

230 Sec. 301. Fiscal impact statement.

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

234 Sec. 302. Effective date.

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

240 (b) This act shall expire after 225 days of its having taken effect.