

1 **AMENDMENT IN THE NATURE OF A SUBSTITUTE**
2 **December 15, 2020**

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9 A BILL

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11 23-965

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13 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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18 To amend the Displaced Workers Protection Act of 1994 to add a new Title II to provide eligible
19 workers who have been displaced by COVID-19 the opportunity to be reinstated once
20 their employer starts rehiring after the pandemic and to allow eligible employees to be
21 reinstated and retained employees employed if there is a change in the ownership,
22 controlling interest, or identify of their employer.
23

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

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

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

30 “Title I. Displaced Workers Protection.”

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

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

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

35 “Sec. 201. Definitions.

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

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

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

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

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

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

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

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

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

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

60 “(3) “Covered establishment” means any of the following businesses in the
61 District of Columbia, a:

62 “(A) Hotel, ~~as defined in paragraph (6) of this section;~~

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

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

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

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

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

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

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

74 “(4) “Eligible employee” means:

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

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

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

85 “(B) Does not include an individuals:

86 “(i) E-employed in an executive, administrative, or professional
87 capacity as defined by the Secretary of Labor under § 13(a)(1) of the Fair Labor Standards Act of
88 1938, as amended, (29 U.S.C. § 213(a)(1));

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

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

95 “(5) “Employer” means any entity, including but not limited to, a for-profit or
96 nonprofit firm, partnership, proprietorship, sole proprietorship, or limited liability company,
97 association, or corporation, or any receiver or trustee of an entity, including the legal
98 representative of a deceased individual or receiver or trustee of an individual, who directly or
99 indirectly or through an agent or any other person, including through the services of a temporary
100 services or staffing agency or similar entity:

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

103 “(B) Is not a contractor;

104 “(C) If the entity operates a hotel, the entity ~~and~~ employed 35-50 or more
105 individuals at a hotel on December 1, 2019; and

106 _____“(D) If the entity does not operate a hotel, the entity and employed 35-50
107 or more
108 individuals at a covered establishment other than a hotel on March 1, 2020.

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

111 “(7) “Hotel worker” means an individual who is employed by an employer or
112 to work at ~~by a hotel, as defined~~
113 in paragraph (6), motel, or
114 similar establishment in the District of Columbia, which provides lodging to transient guests.

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

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

123 “Sec. 202. Right to reinstatement.

124 “(a)(1) Beginning February 1, 2021, as positions become available with the contractor or
125 in the employer’s operation at a covered establishment, the contractor or employer shall offer
126 each eligible employee reinstatement to the employee’s previous position or to a position

127 performing the same or substantially similar duties, and that requires essentially the same skills,
128 as those performed by the eligible employee before the eligible employee ceased working for the
129 contractor or at the covered establishment.

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

133 “(B) ~~If~~ the offer of reinstatement is made by email, text, or same--day
134 delivery, ~~a contractor or employer shall give a deadline, that is no less than 310~~ calendar days
135 from the date the offer of reinstatement is sent, for an eligible employee to accept or decline the
136 offer.

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

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

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

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

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

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

154 “(1) Eligible employees otherwise covered by section 102; or

155 “(2) Eligible or retained employees who work at restaurants, taverns, brew pubs,
156 nightclubs, or clubs unless the change in

157 controlling interest or identity of an employer would have no demonstrable change to its
158 operations.

159 “(b) Except as provided in subsection (a) of this section, ~~t~~he requirements of section 202
160 shall apply to a new employer.

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

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

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

167 “(2) Except as provided in paragraph (5) of this subsection, the new employer
168 shall not discharge a retained employee or an eligible employee reinstated pursuant to section
169 202 during the 90-day transition period without cause.

170 “(3) At the end of the 90-day transition period, the new employer shall perform a
171 written performance evaluation for each retained employee and each eligible employee reinstated

172 pursuant to section 202, and if the retained employee’s or eligible employee’s performance
173 during the 90-day transition period was satisfactory, the new employer shall offer the retained
174 employee or eligible employee continued employment under the terms and conditions
175 established by the new employer.

176 “(4)(A) ~~After the effective date of this title~~Beginning on February 1, 2021, an
177 employer that anticipates a change in controlling interest or the identity of the employer, must,
178 no later than 15 calendar days before the anticipated date of the change in controlling interest or
179 the identity of the employer, provide the following notice:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

238 “Sec. 207. Applicability.

239 “(a) Except as provided in for subsection (b), tThis title shall expire on June 30December
240 31, 2024.”.

241 “(b) Sections 204 and 205 shall expire on June 30, 2025.

242 Sec. 4. Fiscal impact statement.

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

246 Sec. 5. Effective date.

247 This act shall take effect following approval of the Mayor (or in the event of veto by the
248 Mayor, action by the Council to override the veto), a 60-day period of congressional review as
249 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
250 24, 1973 (87 Stat. 813; D.C Official Code § 1-206.22(c)(1)), and publication in the District of
251 Columbia Register.