ENROLLED ORIGINAL

AN ACT

_____

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend An Act To provide for the payment and collection of wages in the District of Columbia, the Minimum Wage Act Revision Act of 1992, the Accrued Sick and Safe Leave Act of 2008, section 47-2862 of the District of Columbia Official Code, and Chapter 9 of Title 7 of the District of Columbia Municipal Regulations to enhance applicable remedies, fines, and administrative penalties when an employer fails to pay earned wages, to provide for suspension of business licenses of employers that are delinquent in paying wage judgments or agreements, to clarify administrative procedures and legal standards for adjudicating wage disputes, to require the employer to provide written notice to each employee of the terms of their employment and to maintain appropriate employment records.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Wage Theft Prevention Amendment Act of 2014".

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 amended by striking the phrase "firm, association, corporation, the legal representative of a deceased individual, or the receiver, trustee, or successor of an individual, firm, partnership" and inserting the phrase "firm, general contractor, subcontractor, association, corporation, the legal representative of a deceased individual, or the receiver, trustee, or successor of an individual, firm, partnership, general contractor, subcontractor," in its place.

(2) Paragraph (2) is amended by striking the phrase "except any person employed in a bona fide executive, administrative, or professional capacity (as such terms are defined and delimited by regulations promulgated by the Council of the District of Columbia)".

(3) New paragraphs (2A), (2B), and (2C) are added to read as follows:

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

"(2B) "Minimum Wage Revision Act" means 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.*).

"(2C) "Sick and Safe Leave Act" means the Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-131.01 *et seq*.).

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

(1) Paragraph (4) is amended by striking the phrase "; provided, however, that for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he thereafter shall have been adjudicated bankrupt upon such petition".

(2) New paragraphs (5) and (6) are added to read as follows:

"(5) When the employer is a subcontractor alleged to have failed to pay an employee any wages earned, the subcontractor and the general contractor shall be jointly and severally liable to the subcontractor's employees for violations of this act, the Living Wage Act, and the Sick and Safe Leave Act. The subcontractor shall indemnify the general contractor for any wages, damages, interest, penalties, or attorneys' fees owed by the general contractor 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 general contractor's lack of prompt payment in accordance with the terms of the contract between the general contractor and subcontractor.

"(6) When a temporary staffing firm employs an employee who performs work on behalf of or to the benefit of another employer pursuant to a temporary staffing arrangement or contract for services, both the temporary staffing firm and the employer shall be jointly and severally liable for violations of this act, the Living Wage Act, and the Sick and Safe Leave Act to the employee and to the District. The District, the employee, or the employee's representative shall notify the temporary staffing firm and employer of the alleged violations at least 30 days before filing a claim for these violations. 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 of this act, the Living Wage Act, and the Sick and Safe Leave Act.".

(c) Section 4 (D.C. Official Code § 32-1304) is amended by striking the sentence "Payment in accordance with this section shall constitute payment for the purposes of complying with sections 2 and 4, only if there exists a bona fide dispute concerning the amount of wages due." and inserting the sentence "The employee or Mayor shall be able to pursue any such balance of unpaid wages and related damages, interest, costs, and penalties." in its place.

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

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

"(a)(1) The Mayor shall enforce and administer the provisions of this act, the Living Wage Act, the Sick and Safe Leave Act, and the Minimum Wage Revision Act, including conducting investigations of any violations and holding hearings and instituting actions for penalties. Any and all prosecutions of violations of this act, the Living Wage Act, the Minimum Wage Revision Act, or the Sick and Safe Leave Act undertaken in court shall be conducted in the name of the District of Columbia by the Office of the Attorney General.

"(2) This subsection shall not be construed to affect investigations of the Minimum Wage Revision Act.".

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

"(a-1) The Mayor shall encourage reporting pursuant to this section by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or other person reporting a violation during the course of any investigation; provided, that with the authorization of such person, the Mayor may disclose the employee or person's name and identifying information as necessary to conduct a hearing and enforce this act or other employee protection laws, including the Living Wage Act, the Minimum Wage Revision Act, or the Sick and Safe Leave Act.".

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

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

"(a)(1) Any employer who negligently fails to comply with the provisions of this act 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 less than the amount of wages owed, but not less than $1,000; or

"(B) For any subsequent offense, an amount per affected employee of not less than double the amount of wages owed, but not less than $2,500.

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

"(A) For the first offense, be fined $2,500 plus an amount per affected employee of not less than double the amount of wages owed, or imprisoned for up to 30 days, or both; or

"(B) For any subsequent offense, $5,000 plus an amount per affected employee of not less than treble the amount of wages owed, or imprisoned for up to 90 days, or both.

"(3) The fines set forth in paragraphs (2) and (3) of this section 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).".

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

"(b)(1) In addition to and apart from any other penalties or remedies provided for in this act or the Living Wage Act, the Mayor shall assess and collect administrative penalties as follows:

"(A) For the first offense, $50 for each employee or person whose rights under this act or the Living Wage Act are violated for each day that the violation occurred or continued; or

"(B) For any subsequent offense, $100 for each employee or person whose rights under this act or the Living Wage Act are violated for each day that the violation occurred or continued.

"(2) In addition to the administrative penalties set forth in paragraph (1) of this subsection, the Mayor shall collect administrative penalties in the amounts set forth below for the following violations:

"(A) Five hundred dollars for failure to provide notice of investigation to employees as required by section 8a(c)(2); and

"(B) Five hundred dollars for failure to post notice of violations to the public, as required by section 8a(h)(2).

"(3) This subsection shall not be construed to affect the Sick and Safe Leave Act or the Minimum Wage Revision Act.".

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

"(c) No administrative penalty may be collected unless the Mayor has provided any person alleged to have violated any of the provisions of this section notification of the violation, notification of the amount of the administrative penalty to be imposed, and an opportunity to request a formal hearing held pursuant to the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1203; D.C. Official Code § 2-501 *et seq.*) ("Administrative Procedure Act") and section 8a. If a formal hearing is requested pursuant to section 8a(e), the Mayor shall issue a final order following the hearing, containing a finding that a violation has or has not occurred. If a hearing is not requested, the person to whom notification of violation was provided shall transmit to the Mayor the amount of the penalty within 15 days following notification.".

(f) A new section 7a is added to read as follows:

"Sec. 7a. Wage Theft Prevention Fund.

"(a) There is established as a special fund the Wage Theft Prevention Fund ("Fund"), which shall be administered by the Department of Employment Services in accordance with subsection (c) of this section.

"(b) The Fund shall consist of the revenue from the following sources recovered under section 7:

"(1) Civil fines; and

"(2) Administrative penalties.

"(c) The Fund shall be used to enforce the provisions of this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, and the Living Wage Act.

"(d)(1) The money deposited into the Fund, and interest earned, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time.

"(2) Subject to authorization in an approved budget and financial plan, any funds appropriated in the Fund shall be continually available without regard to fiscal year limitation.".

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

"Sec. 8. Civil actions.

"(a)(1) Any employee or person aggrieved by a violation of this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act, or any entity a member of which is 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 shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, the payment of any back wages unlawfully withheld, reinstatement in employment, and injunctive relief. Actions may be maintained by one or more employees who may designate an agent or representative to

maintain such action for and on behalf of themselves or on behalf of all employees similarly situated.

"(2) For the purposes of this subsection, 2 or more employees are similarly situated if they:

"(A) Are or were employed by the same employer or employers, whether concurrently or otherwise, at some point during the applicable statute of limitations period;

"(B) Allege one or more violations that raise similar questions as to liability; and

"(C) Seek similar forms of relief.

"(3) Employees shall not be considered dissimilar under this subsection solely because their:

"(A) Claims seek damages that differ in amount; or

"(B) Job titles or other means of classifying employees differ in ways that are unrelated to their claims.

"(b)(1) The court, in any action brought under this section shall, in addition to any judgment awarded to the prevailing plaintiff or plaintiffs, allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees, to be paid by the defendant. In any judgment in favor of any employee under this section, and in any proceeding to enforce such a judgment, the court shall award to each attorney for the employee an additional judgment for costs, including attorney's fees computed pursuant to the matrix approved in *Salazar v. District of Columbia*, 123 F.Supp.2d 8 (D.D.C. 2000), and updated to account for the current market hourly rates for attorney's services. The court shall use the rates in effect at the time the determination is made.

"(2) If the fees remain unpaid to the attorney at the time of any subsequent review, supplementation, or reconsideration of the fee award, the court shall update the award to reflect the hours actually expended and the market rates in effect at that time. No reduction shall be made from this rate, or from the hours actually expended, except upon clear and convincing evidence that the reduction will serve the remedial purposes of this law. Any court reviewing such a reduction shall review it *de novo*.

"(3) Costs shall also include expert witness fees, depositions fees, witness fees, juror fees, filing fees, certification fees, the costs of collecting and presenting evidence, and any other costs incurred in connection with obtaining, preserving, or enforcing the judgment or administrative order.

"(4) The Mayor shall not be required to pay the filing fee or other costs or fees of any nature or to file bond or other security of any nature in connection with any action or proceeding under this section.

"(c)(1) Any action commenced in a court of competent jurisdiction on or after the effective date of the Wage Theft Prevention Amendment Act of 2014, passed on 2nd reading on July 14, 2014 (Enrolled version of Bill 20-671), to enforce any cause of action for unpaid wages or liquidated damages under this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act, or any regulation issued pursuant to this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act, must be commenced within

3 years after the cause of action accrued, or of the last occurrence if the violation is continuous, or the cause of action shall be forever barred.

"(2) This period is tolled:

"(A) From the date the employee files an administrative complaint with the Mayor until the Mayor notifies the employee in writing that the administrative complaint has been resolved or until the administrative complaint is withdrawn by the employee, whichever is sooner; or

"(B) During any period that the employer fails to provide the complainant with actual or constructive notice of the employee's rights.".

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

"Sec. 8a. Administrative actions on employee complaints.

"(a) When an employee requests administrative enforcement of this act, the Minimum Wage Revision Act, the Living Wage Act, and the Sick and Safe Leave Act, the Mayor shall investigate and make an initial determination regarding alleged violations. A signed complaint for non-payment of earned wages shall be filed with the Mayor, no later than 3 years after the last date upon which the violation of this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act is alleged to have occurred or the date on which the employer provided the complainant with actual or constructive notice of the employee's rights, whichever is later.

"(b) If the alleged non-payment of earned wages violation is ongoing at the time of the filing of the complaint, the complaint may also seek recovery of amounts that accrue after the filing of the complaint. With regard to amounts that were due at the time the complaint was filed, an aggrieved employee may recover only those amounts that became lawfully due and payable within the 3-year period before the date the complaint was filed. This period is tolled during any period that the employer fails to provide the complainant with actual or constructive notice of the employee's rights or on other equitable grounds.

"(1) The complaint shall set forth the facts upon which it is based with sufficient specificity to determine both that an allegation of non-payment of earned wages has been made and that the other criteria stated in this section have been met.

"(2) In addition to the other requirements of the complaint set forth in this section, the complaint shall be sworn and shall include or attach the following information:

"(A) The complainant's name, address, and telephone number (or alternate address or telephone number if the complainant desires);

"(B) Sufficient information to enable the Mayor to identify the employer through District records, such as the employer's name, business address, license plate number, or telephone number; and

"(C) An explanation of the alleged violations, which may include the approximate or actual dates the violations occurred, the estimated total dollar amount of unpaid wages, and an explanation of how the total estimated amount of unpaid wages was calculated.

"(3) The Mayor shall request additional information from the complainant to:

"(A) Amend a charge deemed insufficient;

"(B) Cure technical defects or omissions;

"(C) Clarify or amplify allegations; or

"(D) Ensure that any violations related to or arising out of the subject matter set forth or attempted to be set forth in the original charge are adequately alleged in the complaint

"(c)(1) The Mayor shall deliver the complaint and a written notice to each respondent upon completion. The written notice shall set forth the damages, penalties and other costs for which the respondent may be liable, the rights and obligations of the parties, and the process for contesting the complaint.

"(2) The Mayor shall also include an additional notice to employees stating that an investigation is being conducted and providing information to employees on how they may participate in the investigation. Upon receipt, the respondent shall post this additional notice for a period of at least 30 days.

"(3) Within 20 days of the date the complaint and written notice are mailed, the respondent shall:

"(A) Admit that the allegations in the complaint are true and pay to complainant any unpaid wages or compensation and liquidated damages owed and pay to the Mayor any fine or penalty assessed; or

"(B) Deny the allegations in the complaint and request that the agency make an initial determination regarding the allegations in the complaint.

"(4) If a respondent admits the allegations, the Mayor shall issue an administrative order requiring the respondent to pay any unpaid wages, compensation, liquidated damages, and fine or penalty owed and requiring the respondent to cure any violations. The Mayor may also proceed with any audit or subpoena to determine if the rights of employees other than the complainant have also been violated.

"(5) If a respondent denies the allegations, the respondent must notify the Mayor of that decision and may provide any written supporting evidence within 20 days of the date the complaint is mailed.

"(6) If a respondent fails to respond to the allegations within 20 days of the date the complaint is delivered, the allegations in the complaint shall be deemed admitted and the Mayor shall issue an initial determination requiring the respondent to pay any unpaid wages, compensation, liquidated damages, and fine or penalty owed and requiring the respondent to cure any violations.

"(7) The Mayor shall issue an initial determination within 60 days of the date the complaint is delivered. The initial determination shall set forth a brief summary of the evidence considered, the findings of fact, the conclusions of law, and an order detailing the amount owed by the respondent or other relief deemed appropriate, if any. 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.

"(8) In addition to determining whether the complainant has demonstrated that the employer has violated one or more provisions of this act, or the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act, by applying the presumption required by section 5(b), the Mayor shall make an initial determination of whether the complainant is entitled

to additional unpaid earned wages due to other District laws such as the Living Wage Act, the Sick and Safe Leave Act, or the Minimum Wage Revision Act.

"(9) If the Mayor fails to issue an initial determination within 60 days of the filing of a complaint, the complainant shall have a right to request a formal hearing before an administrative law judge.

"(d)(1) The Mayor shall work with the parties in an attempt to conciliate. Any conciliation agreement shall be between the respondent and the complainant and shall be reduced to an administrative order requiring the respondent to pay any unpaid wages, compensation, liquidated damages, and fine or penalty owed and requiring the respondent to cure any violations.

"(2) When an administrative order issued as a result of a conciliation agreement is subsequently breached, the Mayor or the complainant may enforce the administrative order pursuant to this section.

"(e)(1) Within 30 days of the issuance of the initial determination or administrative order, not issued as a result of conciliation, either party may file for a formal hearing before an administrative law judge. If the initial determination was not issued within the 60-day period specified in subsection (c)(7) of this section, a complainant may file for a formal hearing before an administrative law judge. An administrative law judge shall conduct a hearing to determine whether a violation of this act or the Minimum Wage Revision Act, the Living Wage Act, or the Sick and Safe Leave Act has occurred. The hearing shall be scheduled within 30 days of a request, except that the administrative law judge shall issue an order based on the findings from the hearing. The administrative law judge may grant each party one discretionary continuance due to hardship or scheduling of up to 15 days. The administrative law judge may grant any other request for continuance only for good cause.

"(2) The administrative law judge shall have the authority to administer oaths, issue subpoenas, compel the production of evidence, receive evidence, and consolidate 2 or more complaints into a single hearing where such complaints involve sufficiently similar allegations of fact to justify consolidation.

"(3) All parties shall appear at the hearing, with or without counsel, and may submit evidence, cross-examine witnesses, obtain issuance of subpoenas, and otherwise be heard. Testimony taken at the hearing shall be under oath, and a transcript shall be made available at cost to any individual unless the case is sealed. Testimony may also be given and received by telephone.

"(4) The burden of proof by a preponderance of the evidence shall rest upon the complainant, but shall shift to the respondent when the following conditions are met:

"(A) A respondent failed to keep records of an employee's hours worked, or records of compensation provided to an employee are imprecise, inadequate, missing, fraudulently prepared or presented, or are substantially incomplete; and

"(B) A complainant presents evidence to show, as a matter of just and reasonable inference, the amount of work done or the extent of work done or what compensation is due for the work done.

"(5) Where the conditions in paragraph 4(A) and (B) of this subsection are met, the respondent must present compelling evidence of the precise amount of work performed and exact compensation promised or present compelling evidence to negate the reasonableness of the inferences drawn from the complainant's evidence. If the respondent fails to meet this burden, the administrative law judge shall award damages based on the complainant's evidence and may award approximate damages where necessary.

"(6) If a respondent does not appear after receiving notice of a hearing pursuant to this section, the administrative law judge shall proceed to hear proof of the complaint and render judgment accordingly. If, after receiving notice of a hearing pursuant to this section, the complainant does not appear, the administrative law judge shall dismiss the complaint without prejudice.

"(f)(1) At the conclusion of the hearing, the administrative law judge shall issue a decision setting forth a brief summary of the evidence considered, findings of fact and conclusions of law, and an order detailing the relief determined appropriate to the parties and their representatives within 30 days of the hearing.

"(2) Appropriate relief may include any and all unpaid wages, reasonable attorneys' fees and costs, pursuant to subsection (b) of this section, and any liquidated damages.

"(3) The decision and order shall be considered a final administrative ruling, enforceable in a court of competent jurisdiction, and reviewable as provided by applicable law.

"(g)(1) Respondents shall comply with the provisions of any order or conciliation agreement affording relief and shall furnish proof of compliance to the Mayor as specified in the order. If the respondent refuses or fails to comply with the administrative order or conciliation agreement, the Mayor or the complainant may record a lien and may sue in the Superior Court of the District of Columbia for a remedy, enforcement, or assessment or collection of a civil penalty.

"(2) The Superior Court of the District of Columbia shall have no jurisdiction to adjudicate the merits of the underlying claim, but is limited to enforcement of the administrative order or conciliation agreement.

"(3) The Mayor may, at the request of an employee, take an assignment in trust for the assigning employee of such wages and join in a proceeding or action such claims against the same employer as the Mayor considers appropriate, and the Mayor shall have power to settle and adjust any such claim or claims on such terms the Mayor may consider just; provided, that no settlement for an amount less than the amount awarded by the administrative law judge shall be agreed to without the complainant's consent. The Mayor shall maintain regular contact with the complainant concerning the procedural status of any legal actions brought under the assignment and the complainant shall have the right to inquire about and receive information regarding the status of the enforcement action.

"(h) If a respondent fails to timely comply with an administrative order or conciliation agreement that has not been stayed, the Mayor shall:

"(1) Assess an additional late fee equal to 10% of the total amount owed for each month any portion of the award and any already accrued late penalty remains unpaid;

"(2) Require the respondent to post public notice of their failure to comply in a form determined by the Mayor; and

"(3) Consider any unpaid amount to be owed the District as past due restitution on behalf of an employee and suspend any licenses issued to do business in the District as set forth in subsection (i) of this section. Penalty amounts, including civil and criminal penalties and late fees, and any wages, damages, interest, costs, or fees awarded to an employee or representative shall be a lien upon the real estate and personal property of the person who owes them. The lien shall take effect by operation of law on the day immediately following the due date for payment, and, unless dissolved by payment, shall as of that date be considered a tax due and owing to the District, which may be enforced through any and all procedures available for tax collection.

"(i)The Mayor shall:

"(1) Deny an application for any license to do business issued by the District if, during the 3-year period before the date of the application, the applicant admitted guilt or liability or has been found guilty or liable in any judicial or administrative proceeding of committing or attempting to commit a willful violation of this act, the Minimum Wage Revision Act, the Living Wage Act, or the Sick and Safe Leave Act, or any other District, federal, or state law regulating the payment of wages. This subparagraph shall not apply to any person whose final administrative adjudication or judicial judgment or conviction was entered before the effective date of the Wage Theft Prevention Amendment Act of 2014, passed on 2nd reading on July 14, 2014 (Enrolled version of Bill 20-671); and

"(2) Suspend any license to do business issued by the District if the licensee has failed to comply with an administrative order or conciliation agreement issued under this section. Once alerted to an alleged lack of compliance, the Mayor shall notify the business that its license will be suspended in 30 days until the business provides proof that it is in full compliance with the administrative order or conciliation agreement, including any requirements for accelerated payment, interest, or additional damages in the event of a breach. Before the license suspension, the business will have an opportunity to request a hearing to be held pursuant to the Administrative Procedure Act.

"(j) The administrative remedies established in this act shall be in addition to any other criminal, civil, or other remedies established by law that may be pursued to address violations of this act and shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to abate a violation or to seek compensation for damages suffered.

"(k) Any person may be represented by counsel in any proceeding under this act. Any party, including corporate entities, as an alternative to counsel, may be assisted by a non-lawyer authorized by that party in accordance with 1 DCMR § 2835, except where such representation is prohibited by law or disallowed by the administrative law judge for good cause.

"(l)(1) Any party may request that a subpoena be issued by the administrative law judge. Witnesses summoned by subpoena shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the Superior Court of the District of Columbia. Fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by that party.

"(2) Within 10 days after service of a subpoena upon any person, the person may petition the administrative law judge to quash or modify the subpoena. The administrative law judge shall grant the petition if he or she finds that the subpoena:

"(A) Requires appearance or attendance at an unreasonable time or place;

"(B) Requires production of evidence that does not relate to the matter; or

"(C) Does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

"(3) In the case of refusal to obey a subpoena, the administrative law judge or any party may seek enforcement of a subpoena issued under the authority of this act by filing a petition for enforcement in a court of competent jurisdiction. In the enforcement proceeding, the court may award to the party prevailing in the enforcement proceeding all or part of the costs and attorney's fees incurred in obtaining the enforcement order.

"(4) Any person who fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, without good cause, may be fined by a court of competent jurisdiction not more than the amount set forth in 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) or imprisoned not more than 60 days, or both.

"(5) Any person who makes or causes to be made any false entry or false statement of fact in any report, account, record, or other document submitted to the administrative law judge pursuant to its subpoena or other order, or who willfully mutilates, alters, or by any other means falsifies any documentary evidence, may be fined by a court of competent jurisdiction not more than the amount set forth in 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), or imprisoned not more than 60 days, or both.

"(m)(1) The administrative law judge, in any action brought under this section shall, in addition to any administrative order awarded to the prevailing plaintiff, allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees, to be paid by the defendant. In any administrative order in favor of any employee under this section, and in any proceeding to enforce an administrative order, the court shall award to each attorney for the employee an additional judgment for costs, including attorney's fees computed pursuant to the matrix approved in *Salazar v. District of Columbia*, 123 F.Supp.2d 8 (D.D.C. 2000), and updated to account for the current market hourly rates for attorney's services. The administrative law judge shall use the rates in effect at the time the determination is made.

"(2) If the fees remain unpaid to the attorney at the time of any subsequent review, supplementation, or reconsideration of the fee award, the administrative law judge shall update the award to reflect the hours actually expended and the market rates in effect at that time. No reduction shall be made from this rate, or from the hours actually expended, except upon clear and convincing evidence that the reduction will serve the remedial purposes of this law.

"(3) Costs shall also include expert witness fees, depositions fees, witness fees, juror fees, filing fees, certification fees, the costs of collecting and presenting evidence, and any other costs incurred in connection with obtaining, preserving, or enforcing the administrative order.

"(4) The Mayor shall not be required to pay the filing fee or other costs or fees of any nature or to file bond or other security of any nature in connection with any action or proceeding under this section.".

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

"Sec. 10a. Retaliation.

"(a) It shall be unlawful for any employer to discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee or person because that employee or person has:

"(1) Made or is believed to have made a complaint to his or her employer, the Mayor, the Attorney General for the District of Columbia, any federal or District employee, or to any other person that the employer has engaged in conduct that the employee, reasonably and in good faith, believes violates any provision of this act or the Living Wage Act, or any regulation promulgated pursuant to this act or the Living Wage Act;

"(2) Initiated or is about to initiate a proceeding under or related to this act;

"(3) Provided information to the Mayor, the Attorney General for the District of Columbia, or any other person regarding a violation, investigation, or proceeding under this act;

"(4) Testified or is about to testify in an investigation or proceeding under this act; or

"(5) Otherwise exercised rights protected under this act.

"(b) An employee complaint or other communication need not make explicit reference to any section or provision of this act or the Living Wage Act to trigger the protections of this section. The employer, or any person acting on behalf of the employer, taking adverse action against an employee within 90 days of an employee or other person's engagement in the activities set forth in subsection (a) of this section shall raise a presumption that such action is retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons.

"(c) An employee may bring a civil action in a court of competent jurisdiction against any employer or other person alleged to have violated the provisions of this section. The court shall have jurisdiction to restrain violations of this section regardless of an employee's dates of employment and to order all appropriate relief, including:

"(1) Assessing a civil penalty against the employer or other person of not less $1,000 nor more than $10,000;

"(2) Enjoining the conduct;

"(3) Awarding liquidated damages of an amount equal to the civil penalty to the employee;

"(4) Awarding front pay, lost compensation, costs, and reasonable attorneys' fees to the employee;

"(5) Reinstatement of an employee to his or her former position or an equivalent position with restoration of seniority; and

"(6) Other forms of equitable relief.

"(d) An employee may file an administrative complaint against any employer or other person alleged to have violated the provisions of this section and receive a hearing by an

administrative law judge by following the same procedure as for any other violation of this act. If an administrative law judge finds that an employer or other person has engaged in retaliation, the administrative law judge shall, by an order which shall describe with particularity the nature of the violation, assess a civil penalty against the employer or other person of not less than $1,000 nor more than $10,000. The administrative law judge shall also order all appropriate relief including:

"(1) Enjoining the conduct;

"(2) Awarding liquidated damages of an amount equal to the civil penalty to the employee;

"(3) Awarding front pay, lost compensation, costs, and reasonable attorneys' fees to the employee;

"(4) Reinstatement of an employee to his or her former position or an equivalent position with restoration of seniority; and

"(5) Other forms of equitable relief.

"(e) No administrative penalty may be collected unless the Mayor has provided the person alleged to have violated any of the provisions of this section with notification of the violation, notification of the amount of the penalty to be imposed, and notification of the opportunity to request a formal hearing held pursuant to the Administrative Procedure Act and section 8a. If a formal hearing is requested, it shall be held within 30 days of the date of the request and the Mayor shall issue a final order within 30 days after the hearing. The order shall contain a finding that a violation has or has not occurred and the amount of damages, costs, interest, or penalties owed. If the person receiving the violation does not request a hearing, the person shall transmit to the Mayor the amount of the penalty within 15 days of receipt of notification of the violation.

"(f) The court or administrative law judge in any action brought under this section shall, in addition to any judgment or administrative order awarded to the prevailing plaintiff or plaintiffs, allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees as calculated under section 8(b) or section 8a(m), as applicable, to be paid by the defendant.".

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 3(3) (D.C. Official Code § 32-1002(3)) is amended by striking the phrase "partnership, association" and inserting the phrase "partnership, general contractor, subcontractor, association" in its place.

(b) Section 6 (D.C. Official Code § 32-1005) is amended as follows:

(1) Designate the existing language as subsection (a).

(2) A new subsection (b) is added to read as follows:

"(b) "The Mayor shall encourage reporting pursuant to this act by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or other person reporting a violation during the course of any investigation; provided, that with the authorization of such person, the Mayor may disclose his or her name and

identifying information as necessary to conduct a hearing and enforce this act or other employee protection laws.".

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

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

(A) The lead-in language is amended by striking the phrase "3 years" and inserting the phrase "3 years or whatever the prevailing federal standard is, whichever is greater," in its place.

(B) Subparagraph (D) is amended by striking the phrase "hours worked" and inserting the phrase "precise time worked" in its place.

(2) New subsections (c), (d), and (e) are added to read as follows:

"(c) Every employer, except as specified in section 9a, 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:

"(1) The name of the employer and any "doing business as" names used by the employer;

"(2) The physical address of the employer's main office or principal place of business, and a mailing address, if different;

"(3) The telephone number of the employer;

"(4) The employee's rate of pay and the basis of that rate, including: by the hour, shift, day, week, salary, piece, commission, any allowances claimed as part of the minimum wage, including tip, meal, or lodging allowances, or overtime rate of pay, exemptions from overtime pay, living wage, exemptions from the living wage, and the applicable prevailing wages;

"(5) The employee's regular payday designated by the employer in accordance with section 2 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 § 32-1302); and

"(6) Any such other information as the Mayor considers material and necessary.

"(d)(1) Within 90 days of the effective date of the Wage Theft Prevention Amendment Act of 2014, passed on 2nd reading on July 14, 2014 (Enrolled version of Bill 20-671), or whenever any of the information required in subsection (c) of this section changes, every employer, except as specified in section 9a, shall furnish each employee with an updated written notice containing the information required under subsection (c) of this section. As proof of compliance, every employer shall retain copies of the written notice furnished to employees that are signed and dated by the employer and by the employee acknowledging receipt of the notice.

"(2) If an employer fails to comply with this subsection or subsection (c) of this section, the failure shall constitute evidence weighing against the credibility of the employer's testimony regarding the rate of pay promised.

"(3) The period prescribed in section 8(c) of An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 978; D.C. Official Code § 32-1308(c)), shall not begin until the employee is provided all itemized statements and written notice required by subsections (b) and (c) of this section.

"(e) The Mayor shall make available for employers a sample template of the notice within 60 days of the effective date of the Wage Theft Prevention Amendment Act of 2014, passed on 2nd reading on July 14, 2014 (Enrolled version of Bill 20-671).".

(d) A new section 9a is added to read as follows:

"Sec. 9a. Notice requirements for temporary staffing firms.

"(a)(1) A temporary staffing firm shall furnish to each employee at the time of the initial interview or hire a notice that is signed and dated by the temporary staffing firm and the employee containing the information required by section 9(c).

"(2) For the purposes of the notice:

"(A) If a specific rate of pay has not been determined at the time of the initial interview or hire, a temporary staffing firm shall provide the employee with a range of potential wages the employee will likely earn based upon the qualifications of the employee and the suitability of the assignment;

"(B) The range of potential hourly wages may not be excessively broad and must be based on a good-faith estimate of the typical wage earned by similarly qualified employees working at assignments similar to those for which the employee is eligible and likely to be assigned; and

"(C) If a fixed, designated payday has not been established at the time of the initial interview or hire, a temporary staffing firm shall inform the employee that the payday may vary depending upon the usual practice at the assignment.

"(b) When a temporary staffing firm assigns an employee to perform work at, or provide services for other another organization, the temporary staffing firm must notify the employee in writing of:

"(1) The specific designated payday for the particular assignment;

"(2) The actual rate of pay for the assignment and the benefits, if any, to be provided;

"(3) The overtime rate of pay the employee will receive, or, if applicable, inform the employee that the position is exempt from additional overtime compensation and the basis for the overtime exemption;

"(4) The location and name of the client employer and the temporary staffing firm;

"(5) The anticipated length of the assignment;

"(6) Whether training or safety equipment is required and who is obligated to provide and pay for the equipment;

"(7) The legal entity responsible for workers' compensation, should the employee be injured on the job; and

"(8) Information about how to contact the designated enforcement agency for concerns about safety, wage and hour, or discrimination.

"(c) Notice provided under this section must be provided in English and in the employee's primary language if other than English.

"(d) For the purposes of this section:

"(1) The term "temporary staffing firm" means a business that recruits and hires its own employees and assigns those employees to perform work at or services for another organization, to support or supplement the other organization's workforce, or to provide assistance in special work situations such as employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects.

"(2) Electronic mail, text messaging, facsimile, and regular mail shall each constitute written notice.".

(e) Section 10 (D.C. Official Code § 32-1009) is amended as follows:

(1) Subsection (a) is amended by adding a sentence at the end to read as follows: "If an employer fails to comply with this requirement, the period prescribed in section 8(c) of An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 978; D.C. Official Code § 32-1308(c)), shall not begin until the employer posts or provides the required notice.".

(2) Subsection (b) is amended by striking the phrase "without charge" and inserting the phrase "without charge, in accordance with the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931 *et seq.*)" in its place.

(3) A new subsection (c) is added to read as follows:

"(c) Employers shall be furnished with copies or summaries of this act within 60 days of the effective date of the Wage Theft Prevention Amendment Act of 2014, passed on 2nd reading on July 14, 2014 (Enrolled version of Bill 20-671). An employer shall not be liable for failure to post notice if the Mayor has failed to provide to the employer the notice required by this section."

(f) Section 11 (D.C. Official Code § 32-1010) is amended as follows:

(1) Designate the existing language as subsection (a)

(2) The newly designated subsection (a)(3) is amended to read as follows:

"(3) Discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee or person because that employee or person has:

"(A) Made or is believed to have made a complaint to his or her employer, the Mayor, the Attorney General for the District of Columbia, any federal or District employee, or to any other person that the employer has engaged in conduct that the employee, reasonably and in good faith, believes violates any provision of this act, or any regulation promulgated pursuant to this act;

"(B) Caused to be instituted or is about to institute a proceeding under or related to this act;

"(C) Provided information to the Mayor, or the Attorney General for the District of Columbia, or any federal or District of Columbia employee;

"(D) Testified or is about to testify in an investigation or any proceeding filed under this act; or

"(E) Exercised rights protected under this act.".

(3) A new subsection (b) is added to read as follows:

"(b) An employee complaint or other communication need not make explicit reference to any section or provision of this act to trigger the protections of this section. The employer, or any person acting on behalf of the employer, taking adverse action against an employee within 90 days of an employee or other person's engagement in the activities set forth in subsection (a) of this section shall raise a presumption that the action is retaliation. The presumption may be rebutted by clear and convincing evidence that the action was taken for other permissible reasons.".

(g) Section 12 (D.C. Official Code § 32-1011) is amended as follows:

(1) Subsection (a) is amended by striking the word "willfully" and inserting the phrase "willfully or negligently" in its place.

(2) Subsection (b) is amended by striking the word "committed" and inserting the phrase "committed willfully or" in its place.

(3) Subsection (c) is amended by striking the phrase "Corporation Counsel" and inserting the phrase "Attorney General" in its place.

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

"(d) (1) In addition to and apart from the penalties or remedies provided for in this section or section 13, the Mayor shall assess and collect administrative penalties as follows:

"(A) For the first violation of section 4, $50 for each employee or person whose rights under this act are violated for each day that the violation occurred or continued;

"(B) For any subsequent violation of section 4, $100 for each employee or person whose rights under this act are violated for each day that the violation occurred or continued;

"(C) $500 for each failure to maintain payroll records or to retain payroll records for 3 years or whatever the prevailing federal standard is, whichever is greater for each violation as required by section 9(a)(1);

"(D) $500 for each failure to allow the Mayor to inspect payroll records or perform any other investigation pursuant to section 9(a)(2) or section 11(a)(4);

"(E) $500 for each failure to provide each employee an itemized wage statement or the written notice as required by section 9(b) and (c); and

"(F) $100 for each day that the employer fails to post notice as required under section 10(a).

"(2) The Mayor may assess more than one administrative penalty against an employer for the same adversely affected employee if the employer has violated more than one statutory provision of this act, the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code § 2-220.01 *et seq.*), 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.*), or the Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-131.01 *et seq.*).".

(5) Subsection (e) is repealed.

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

"(g) The administrative fines and penalties collected under this section shall be deposited into the Wage Theft Prevention Fund, established by section 7a of An Act To provide for the payment and collection of wages in the District of Columbia, passed on 2nd reading on July 14, 2014 (Enrolled version of Bill 20-671)("Wage Payment Act").".

(h) A new section 12a is added to read as follows:

"Sec. 12a. Remedies.

"If an employer or other person is found to have violated section 11(a)(3), the court or administrative law judge shall, by an order which shall describe with particularity the nature of the violation, award to the employee liquidated damages of not less than $1,000 and not more than $10,000.".

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

"Sec. 13. Civil actions.

"(a) A civil action may be commenced according to section 8 of the Wage Payment Act.

"(b)(1) Except as provided in paragraph (2) of this subsection, any employer who pays any employee less than the wage to which that employee is entitled under this act shall be liable to that employee in the amount of the unpaid wages, statutory penalties, and an additional amount as liquidated damages equal to treble the amount of unpaid wages.

"(2) 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 to the satisfaction of the court that:

"(A) The act or omission that gave rise to the action was in good faith;

"(B) That the employer had reasonable grounds for the belief that the act or omission was not in violation of this act; and

"(C) That the employer promptly paid the full amount of wages claimed to be owed to the employee.

"(c) When the employer is a subcontractor alleged to have failed to pay an employee any wages earned, the subcontractor and the general contractor shall be jointly and severally liable to the subcontractor's employees for violations of this act. The subcontractor shall indemnify the general contractor for any wages, damages, interest, penalties, or attorneys' fees owed by the general contractor as a result of the subcontractor's violations of this act, unless those violations were due to the general contractor's lack of prompt payment in accordance with the terms of the contract between the general contractor and subcontractor.

"(d) Any agreement between an employer and employee in which the employee agrees to work for less than the wages to which the employee is entitled under this act or any regulation issued under this act shall be no defense to any action to recover unpaid wages or liquidated damages.

"(e) The Mayor is authorized to supervise the payment of unpaid wages and liquidated damages owed to any employee under this act or any regulation issued under this act, and the agreement of any employee to accept this payment, shall upon full payment, constitute a waiver

by the employee of any right the employee may have under subsection (a) of this section to any unpaid wages, and an additional amount as liquidated damages.

"(f) When a temporary staffing firm employs an employee who performs work on behalf of or to the benefit of another employer pursuant to a temporary staffing arrangement or contract for services, both the temporary staffing firm and the employer shall be jointly and severally liable for violations of this act to the employee and to the District. The District, the employee, or the employer's representative shall notify the temporary staffing firm and employer of the violations at least 30 days before filing a claim for these violations. Unless otherwise agreed to by the parties, the temporary staffing firm shall indemnify the employer for any wages, damages, interest, penalties, or attorneys' fees owed by the employer as a result of the temporary staffing firm's violations of this act.".

(j) A new section 13a is added to read as follows:

"Sec. 13a. Administrative actions.

"When an administrative complaint is filed against any employer or other person alleged to have violated this act, a hearing by an administrative law judge shall be scheduled following the same procedure and available for a violation of the Wage Payment Act.".

(k) Section 14 (D.C. Official Code § 32-1013) is repealed.

Sec. 4. The Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-131.01 *et seq*.), is amended as follows:

(a) Section 7(b) (D.C. Official Code § 32-131.06(b)) is amended by striking the phrase "that expressly waives the requirements in clear and unambiguous terms".

(b) Section 9(b)(2) (D.C. Official Code § 32-131.08(b)(2)) is amended as follows:

(1) Subparagraph (C) is amended by striking the phrase "civil complaint" and inserting the phrase "civil or administrative complaint" in its place.

(2) Subparagraph (F) is amended by striking the phrase "unlawful under this act" and inserting the phrase "a violation of this act" in its place.

(c) Section 11a (D.C. Official Code § 32-131.10a) is amended to read as follows:

"All civil or administrative complaints brought under this act shall be filed within 3 years of the event or final instance of a series of events on which the complaint is based, except the 3-year period shall be tolled for the duration of any period during which the employer does not post the notice required under section 10, or, for civil complaints, when an administrative complaint is filed.".

(d) Section 13 (D.C. Official Code § 32-131.12) is amended as follows:

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

(A) Designate the existing language as paragraph (1).

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

"(2) When an administrative complaint is filed against any employer or other person alleged to have violated this act, a hearing by an administrative law judge shall be scheduled following the same procedure available in section 8a of An Act To provide for the payment and collection of wages in the District of Columbia, passed on 2nd reading on July 14, 2014 (Enrolled version of Bill 20-671), for a violation of that act.".

(2) Subsection (c) is amended by striking the phrase "civil penalty" and inserting the phrase "civil penalty for each affected employee" in its place.

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

"(3) Compensatory damages, punitive damages, and additional damages as provided in subsection (b) of this section; and".

(4) Subsection (e)(3) is amended to read as follows:

"(3) Compensatory damages, punitive damages, and additional damages as provided in subsection 13(b); and".

(5) A new subsection (i) is added to read as follows:

"(i) The administrative fines and penalties collected under this section shall be deposited into the Wage Theft Prevention Fund, established by section 7a of An Act To provide for the payment and collection of wages in the District of Columbia, passed on 2nd reading on July 14, 2014 (Enrolled version of Bill 20-671).".

Sec. 5. Section 47-2862(a) of the District of Columbia Official Code is amended as follows:

(a) Paragraph (7) is amended by striking the word "or" at the end.

(b) Paragraph (8) is amended by striking the period and inserting the phrase "; or" in its place.

(c) A new paragraph (9) is added to read as follows:

"(9) Owes the District any past due fines, penalties, or past due restitution on behalf of an employee due to a violation of Chapter 13 of Title 32, Chapter 1A of Title 32, Chapter 10 of Title 32, or Subchapter X-A of Chapter 2 of Title 2.".

Sec. 6. Repealer.

Section 902.4(e) of Title 7 of the District of Columbia Municipal Regulations (7 DCMR § 902.4(e)) is repealed.

Sec. 7. Applicability.

(a) This act shall apply as of October 1, 2014.

(b) This act shall apply to violations occurring after October 1, 2014.

Sec. 8. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 9. 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.

_____
Chairman
Council of the District of Columbia

_____
Mayor
District of Columbia