

A BILL

23-871

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:

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

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

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

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

(5) “Employer” includes every individual, partnership, 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, association, or corporation, employing any person in the District of Columbia. The term “employer” shall include the District government or a quasi-governmental agency. The term “employer” shall not include the United States government or its agencies.

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

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

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

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

(10) “PPE” means personal protective equipment.

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

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

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

Sec. 102. Employer policies and workplace protections.

(a) Beginning 7 days after the effective date of this title and during the public health emergency, employers in the District shall adopt and implement social distancing and worker protection policies to prevent transmission of COVID-19 in the workplace to adhere with the

requirements of Mayor's Order 2020-080, or subsequent Mayor's Order. For employees that are present in the workplace, employers shall:

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

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

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

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

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

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

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

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

95 ~~(3) Provide employees access to and permission to regularly use soap and water,~~
96 ~~when possible, and hand sanitizer;~~

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

98 ~~(5) Require, at minimum, customers, contractors, vendors, and other visitors to~~
99 ~~the workplace to properly wear face coverings whenever they are or are likely to be fewer than 6~~
100 ~~feet from another individual, provided, that the following persons are not required to wear face~~
101 ~~coverings:~~

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

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

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

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

109 ~~(E) A person who is eating or drinking;~~

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

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

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

114 ~~(I) A person whose equipment required for a job precludes the wearing of~~
115 ~~a mask and the person is wearing that equipment, or when wearing a mask would endanger~~
116 ~~public safety;~~

117 ~~(J) a person has been lawfully asked to remove the mask for facial~~
118 ~~recognition purposes;~~

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

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

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

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

129 Sec. 103. Retaliation prohibited.

130 (a) No employer or agent thereof may take an adverse employment action against an

employee for the employee's refusal to serve a customer or client, or to work within 6 feet of an individual, who is not complying with the workplace protections in section 102.

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

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

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

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

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

(2) Nothing in this title prohibits an employer from requiring an employee who has tested positive for COVID-19 to refrain from entering the workplace until a medical professional has cleared the employee to return to the workplace or until a period of quarantine recommended by the Department of Health or Centers for Disease Control has elapsed.

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

Sec. 104. Enforcement.

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

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

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

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

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

(2) The Attorney General, acting in the public interest, including the need to deter future violations, may enforce this title by commencing a civil action in the name of the District

of Columbia in a court of competent jurisdiction on behalf of the District or one or more aggrieved employees.

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

(A) Reasonable attorneys' fees and costs;

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

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

(D) Equitable relief as may be appropriate.

Sec. 105. Preemption.

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

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

TITLE II. PERSONAL PROTECTIVE EQUIPMENT GRANT PROGRAM

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

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

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

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

“Sec. 2317. Personal protective equipment grant program.

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

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

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

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

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

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

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

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

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

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

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

Sec. 202. (a)(1) The Chief Procurement Officer, or designee, shall have the authority during the public health emergency and for 90 days thereafter to enter into an indefinite-

delivery/indefinite quantity contract (“IDIQ contract”) for PPE, sanitization and cleaning products, related equipment, or other goods or supplies in furtherance of the District’s COVID-19 recovery efforts that permit an entity that is, or is similar to, a local business enterprise as that term is defined in section 2302(16) of the Small and Certified Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*) (“CBE Act”), to place orders under the IDIQ contract at the prices specified in the IDIQ contract.

(2) Priority consideration for purchasing through the IDIQ contract shall be given to an eligible entity, as described in paragraph (2) of this subsection, that is also:

(A) A Small business enterprise, as that term is defined in section 2302(12) of the CBE Act;

(B) A Resident-owned business, as that term is defined in section 2302(15) of the CBE Act; or

(C) At least 51% owned by economically disadvantaged individuals, as that term is defined in section 2302(7), or owned by individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(b) The Chief Procurement Officer, or designee, shall monitor and review, and may establish standards, procedures, or rules for, IDIQ contracts entered into pursuant to subsection (a) of this section.

250 TITLE III. FISCAL IMPACT AND EFFECTIVE DATE

251 Sec. 301. Fiscal impact statement.

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

255 Sec. 302. Effective date.

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

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