

1 A BILL
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23-871

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

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27 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this

28 act may be cited as the “Protecting Businesses and Workers from COVID-19 Temporary
29 Amendment Act of 2020”.

30 TITLE I. COVID-19 WORKPLACE SAFETY PROTECTIONS

31 Sec. 101. Definitions.

32 For the purposes of this title, the term:

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

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

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

43 (5) "Employer" includes every individual, partnership, firm, general contractor,

44 subcontractor, association, corporation, the legal representative of a deceased individual, or the
45 receiver, trustee, or successor of an individual, firm, partnership, general contractor,
46 subcontractor, association, or corporation, employing any person in the District of Columbia.

47 The term “employer” shall include the District government or a quasi-governmental agency. The
48 term “employer” shall not include the United States government or its agencies.

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

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

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

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

59 (10) "PPE" means personal protective equipment.

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

63 (12) "Wear a face covering" means to cover both nose and mouth.

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

67 Sec. 102. Employer policies and workplace protections.

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

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

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

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

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

80 (II) A new, disposable face mask for each day of work; and
81 (ii) In addition to the face masks provided pursuant to sub-
82 subparagraph (i) of this sub paragraph, for each employee whose regular job duties make it
83 likely that the employee will be unable to maintain a distance of at least 6 feet from another
84 individual while performing such duties and the employee is required to remain at a stationary
85 post:

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

89 (II) Provide the employee with eye protection such as a
90 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

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

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

135 (A) The employee tested positive for COVID-19; provided, that the
136 employee did not physically report to the workplace after receiving a positive test result;
137 (B) The employee was exposed to someone with COVID-19 and needs to
138 quarantine;

139 (C) The employee is sick and is waiting for a COVID-19 test result; or
140 (D) The employee is caring for or seeks to provide care for someone who
141 is sick with COVID-19 symptoms or who is quarantined.

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

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

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151 Sec. 104. Enforcement.

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

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

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

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

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

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

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

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

174 (A) Reasonable attorneys' fees and costs;
175 (B) Statutory penalties in amount not greater than the maximum
176 administrative penalties provided under subsection (a) of this section; and
177 (C) On behalf of an aggrieved employee, the payment of lost wages; and
178 (D) Equitable relief as may be appropriate.

179 Sec. 105. Preemption.

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

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

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190 TITLE II. PERSONAL PROTECTIVE EQUIPMENT GRANT PROGRAM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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230 delivery/indefinite quantity contract (“IDIQ contract”) for PPE, sanitization and cleaning
231 products, related equipment, or other goods or supplies in furtherance of the District’s COVID-
232 19 recovery efforts that permit an entity that is, or is similar to, a local business enterprise as that
233 term is defined in section 2302(16) of the Small and Certified Business Enterprise Development
234 and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code §
235 2-218.01 *et seq.*) (“CBE Act”), to place orders under the IDIQ contract at the prices specified in
236 the IDIQ contract.

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

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

247 (b) The Chief Procurement Officer, or designee, shall monitor and review, and may
248 establish standards, procedures, or rules for, IDIQ contracts entered into pursuant to subsection
249 (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.