

A RESOLUTION

23-640

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 15, 2020

To declare the existence of an emergency, with respect to the need to amend the Displaced Workers Protection Act of 1994 to add a new Title II to provide eligible workers who have been displaced by COVID-19 the opportunity to be reinstated once their employer starts rehiring after the pandemic, and to allow eligible employees to be reinstated and retained employees employed if there is a change in the ownership, controlling interest, or identify of their employer.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Displaced Workers Right to Reinstatement and Retention Emergency Declaration Resolution of 2020”.

Sec. 2. (a) On March 11, 2020, Mayor Bowser issued Mayor’s Orders 2020-45 and 2020-46, declaring a public emergency and a public health emergency in the District due to the imminent threat to the health, safety, and welfare of District residents posed by the spread of the COVID-19 virus. Since then, Mayor Bowser has extended the public health emergency, and it is still in effect.

(b) On March 16, 2020, the Mayor issued Mayor’s Order 2020-48, which prohibited gatherings of 50 or more individuals and suspended table seating in restaurants and taverns. Due to the increasing number of COVID-19 cases in the District, on March 24, 2020, the Mayor ordered all non-essential businesses to cease operations. As a result of these necessary actions, the District’s hospitality (hotels, restaurants, and entertainment and event venues) and retail industries came to a halt, which resulted in mass lay-offs.

(c) While limited operations have resumed, many individuals are still out of work. Of the more than 7,000 mostly hotel workers that comprise UNITE HERE Local 25, 90% were still out of work as of the beginning of November 2020. Although restaurants have been able to offer take-out or delivery services during the District’s lockdown, this is not nearly enough to support an entire restaurant; consequently, most restaurant staff have been laid off. Further, entertainment and event venues either remain closed or have severely restricted capacity, so many of them have reduced their staffing needs or laid off staff entirely. Likewise, retailers have laid off a large portion of their workforce, as they were also closed for an extended period during

the District's lockdown. While many stores have opened since then, sales are only 40-60% of 2019 sales.

(d) Due to the limitations on in-person gatherings and to keep individuals safe, many businesses are teleworking. Only about 10% of employees who work in downtown D.C. have returned to their offices, which, in turn, reduces the need for contract staff such as janitorial or security staff at these buildings. Food service contract workers have also been largely affected by the shutdowns with companies such as Aramark laying off over 800 employees until Capital One Arena and the Convention Center reopen.

(e) All of these employees need reassurance that their jobs will be there when their businesses begin to rehire or reopen and are back to full strength. Although the District has a displaced workers law, the Displaced Workers Protection Act of 1994, effective April 26 1994 (D.C. Law 10-105; D.C. Official Code § 32-101 *et seq.*) ("D.C. Law 10-105"), it only provides protection to employees employed by a contractor in a limited set of circumstances, for example, when a contractor at an establishment is replaced by another. It does not provide protections for contract workers when there is not a change in contractors, nor does it provide a right of return for the thousands of workers displaced because of the pandemic. Moreover, D.C. Law 10-105 does not extend to hospitality or retail workers if their employers sell, change the controlling interest in the employer, or change the employer's identity. The Displaced Workers Right to Reinstatement and Retention Emergency Amendment Act of 2020 ("emergency act") seeks to provide these protections.

(f) The emergency act is identical to the Displaced Workers Right to Reinstatement and Retention Amendment Act of 2020, passed on 1st reading on December 1, 2020 (Engrossed version of Bill 23-965) ("Bill 23-965"), and will have a second reading on December 15, 2020.

(g) Like Bill 23-965, the emergency act does not require employers or contractors to hire back all of their employees regardless of the positions available or to find new positions for employees whose positions have been eliminated; for example, if a restaurant employed someone as a hostess, the restaurant does not have to offer to hire that person back to be a waitress if the restaurant eliminated the hostess position.

(h) The emergency act is not retroactive but requires employers and contractors to comply as of February 1, 2021. This date was chosen because it balances the need for notice to employers and contractors and the need for individuals to have job protection as soon as possible. Although Bill 23-965 also requires employers to comply with the bill as of February 1, 2021, it will take months for Bill 23-965 to become permanent law, meaning that Bill 23-965 will become law after February 1, 2021. To ensure that the relevant employers and displaced workers are aware of the new reinstatement and retention policies and that the law is in place as of February 1, 2021, it is imperative that the emergency act be approved and in place by that date.

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Sec. 3. The Council of the District of Columbia determines that the circumstances in section 2 constitute emergency circumstances making it necessary that the Displaced Workers Right to Reinstatement and Retention Emergency Amendment Act of 2020 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.