

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To require, on an emergency basis, employers to adopt and implement social distancing policies that adhere to Mayor’s Order 2020-080 or subsequent Mayor’s Order, to prohibit retaliation against an employee who refuses to work with or serve an individual who refuses to comply with Mayor’s Order 2020-080 or subsequent Mayor’s Order, to prohibit retaliation against an employee because the employee tests positive for or 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 of this act or to stop or prevent a violation of the worker safety provisions of Title I of this act, to authorize the Mayor and Attorney General to administer and enforce workplace and employee protections in title I, to authorize the Attorney General to bring civil actions in a court of competent jurisdiction, to authorize the Chief Procurement Officer to enter into an indefinite duration/indefinite quantity contract to assist eligible businesses in the purchase of personal protective equipment and other supplies related to the containment of COVID-19, to permit federal laws, polices, and standards or a Mayor’s Order that contains stricter personal protective equipment standards to preempt the terms of title I; 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 Congressional Review Emergency Amendment Act of 2020”.

TITLE I. COVID-19 WORKPLACE SAFETY PROTECTIONS

Sec. 101. Definitions.

For the purposes of this title, the term:

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

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

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

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

49 (5) “Employer” includes every individual, partnership, firm, general contractor,
50 subcontractor, association, corporation, the legal representative of a deceased individual, or the
51 receiver, trustee, or successor of an individual, firm, partnership, general contractor,
52 subcontractor, association, or corporation employing any person in the District of Columbia. The
53 term “employer” shall include the District government or a quasi-governmental agency. The
54 term “employer” shall not include the United States government or its agencies.

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

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

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

63 (9) “PPE” means personal protective equipment.

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

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

70 Sec. 102. Employer policies and workplace protections.

71 (a) Beginning 7 days after the effective date of this title and during the public health
72 emergency, employers in the District shall adopt and implement social distancing and worker
73 protection policies to prevent transmission of COVID-19 in the workplace that adhere to the
74 requirements of Mayor’s Order 2020-080, or subsequent Mayor’s Order.

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

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

80 Sec. 103. Retaliation prohibited.

81 (a) No employer or agent thereof may take an adverse employment action against an
82 employee for the employee’s refusal to serve a customer or client, or to work within 6 feet of an
83 individual, who is not complying with the workplace protections established pursuant to section

84 102.

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

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

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

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

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

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

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

101 Sec. 104. Enforcement.

102 (a)(1) The Mayor may enforce and administer this title by conducting investigations (of
103 the Mayor's own volition or after receiving a complaint), holding hearings, and assessing
104 penalties. The Mayor shall have the power to administer oaths and examine witnesses under
105 oath, issue subpoenas, compel the attendance of witnesses, compel the production of papers,

106 books, accounts, records, payrolls, documents, and testimony, and to take depositions and
107 affidavits in any proceedings before the Mayor.

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

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

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

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

118 (2) The Attorney General, acting in the public interest, including the need to deter
119 future violations, may enforce this title by commencing a civil action in the name of the District
120 of Columbia in a court of competent jurisdiction on behalf of the District or one or more
121 aggrieved employees.

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

124 (A) Reasonable attorneys' fees and costs;

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

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

128 (D) Equitable relief as may be appropriate.

129 Sec. 105. Authority of Chief Procurement Officer.

130 (a)(1) The Chief Procurement Officer (“CPO”), or the CPO’s designee, shall have the
131 authority during the public health emergency, and for 90 days thereafter, to enter into an
132 indefinite-delivery/indefinite quantity contract (“IDIQ contract”) for PPE, sanitization and
133 cleaning products, related equipment, or other goods or supplies in furtherance of the District’s
134 COVID-19 recovery efforts that permit an entity that is, or is similar to, a local business
135 enterprise, as that term is defined in section 2302(12) of the Small and Certified Business
136 Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-
137 33; D.C. Official Code § 2-218.02(12)) (“CBE Act”), to place orders under the IDIQ contract at
138 the prices specified in the IDIQ contract.

139 (2) Priority consideration for purchasing through the IDIQ contract shall be given
140 to an eligible entity that is also:

141 (A) A small business enterprise, as that term is defined in section 2302(16)
142 of the CBE Act;

143 (B) A Resident-owned business, as that term is defined in section
144 2302(15) of the CBE Act; or

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

149 (b) The CPO, or the CPO’s designee, shall monitor and review, and may establish
150 standards, procedures, or rules for IDIQ contracts entered into pursuant to subsection (a) of this
151 section.

152 Sec. 106. Preemption.

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

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

160 TITLE II. PERSONAL PROTECTIVE EQUIPMENT GRANT PROGRAM

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

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

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

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

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

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

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

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

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

180 “(2) A grant issued pursuant to this section may be provided in an amount up to
181 \$1,000 per eligible small business for the purchase of or reimbursement for purchases of PPE
182 made on or after the enacted date of the Protecting Businesses and Workers from COVID-19
183 Emergency Amendment Act of 2020, 2020, effective August 13, 2020 (D.C. Act 23-384; 67
184 DCR 9870).

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

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

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

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

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

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

199 TITLE III. PUBLIC HEALTH EMERGENCY AUTHORITY

200 Sec. 301. (a) Section 7(c-1) of the District of Columbia Public Emergency Act of 1980,
201 effective March 5, 1981 (D.C. Law 3-149; D.C. Official Code § 7-2306(c-1)), is amended to read
202 as follows:

203 “(c-1) Notwithstanding subsections (b) and (c) of this section, the Council authorizes the
204 Mayor to extend the 15-day March 11, 2020, emergency executive order and public health
205 emergency executive order (“emergency orders”) issued in response to the coronavirus (SARS
206 CoV-2) through December 31, 2020. After the extension authorized by this subsection, the
207 Mayor may extend the emergency orders for additional 15-day periods pursuant to subsection (b)
208 or (c) of this section.”.

209 (b) This section shall expire on January 1, 2021.

210 TITLE IV. APPLICABILITY; FISCAL IMPACT; EFFECTIVE DATE

211 Sec. 401. Applicability.

212 This act shall apply as of November 10, 2020.

213 Sec. 402. Fiscal impact statement.

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

217 Sec. 403. Effective date.

218 This act shall take effect following approval by the Mayor (or in the event of veto by the
219 Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90
220 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of

221 the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official
222 Code § 1-204.12(a)).
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