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2 Chairman Phil Mendelson

Councilmember Elissa Silverman

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6 Councilmember Anita Bonds

Councilmember Brianne K Nadeau

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10 Councilmember Mary M Cheh

Councilmember Charles Allen

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12 A BILL

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18 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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23 To amend An Act To provide for the payment and collection of wages in the District of
24 Columbia to exempt an employer from paying wages to bona fide executive,
25 administrative, and professional employees at least twice during each calendar month,
26 provided that the employer pays wages to such employees at least once per month; to
27 clarify that the Attorney General can bring civil enforcement actions in court; to clarify
28 which membership organizations may bring civil actions on behalf of their members; to
29 revise criminal penalties for violations of the act; and to authorize the Mayor to issue
30 rules; to amend the Minimum Wage Revision Act of 1992 to remove the exemption
31 prohibiting parking lot and garage attendants from receiving the protections of the
32 District's overtime laws; to clarify how long an employer must keep records of precise
33 time worked for most employees and to exempt employers from keeping precise time
34 records for bona fide executive, administrative, professional, and certain other
35 employees; to require an employer or a temporary staffing firm to provide notice
36 regarding payment to an employee in a second language if the Mayor has made available
37 a translation of the form in that language and the employer knows that language to be the
38 employee's primary language or the employee requests notice in that second language; to
39 require the Mayor to make available a translation of the form to be used by an employer
40 or a temporary staffing firm when providing notice to an employee regarding payment; to
41 clarify how the Mayor shall make certain information available to employers; to clarify
42 when a subcontractor or a temporary staffing firm must indemnify a jointly liable
43 intermediate or general contractor or client for violations; and to clarify the remedies and
44 procedures available to claimants; and to amend the Wage Theft Prevention Amendment
45 Act of 2014 to repeal a retroactive applicability provision.

47 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
48 act may be cited as the “Wage Theft Prevention Clarification and Overtime Fairness Amendment
49 Act of 2015”.

50 Sec. 2. An Act To provide for the payment and collection of wages in the District of
51 Columbia, approved August 3, 1956 (70 Stat 976; D.C. Official Code § 32-1301 *et seq.*), is
52 amended as follows:

53 (a) Section 2 (D.C. Official Code § 32-1302) is amended by striking the phrase “Every
54 employer shall pay all wages earned to his employees at least twice during each calendar month,
55 on regular paydays designated in advance by the employer;” and inserting the phrase “An
56 employer shall pay all wages earned to its employees on regular paydays designated in advance
57 by the employer and at least twice during each calendar month, except that all bona fide
58 administrative, executive, and professional employees as defined in 7 D.C.M.R. 999.1 shall be
59 paid at least once per month;” in its place.

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

61 (1) Paragraph 5 is amended to read as follows:

62 “(5) A subcontractor, any intermediate subcontractor, and the general contractor
63 shall be jointly and severally liable to the subcontractor’s employees for the subcontractor’s
64 violations of this act, the Living Wage Act, and the Sick and Safe Leave Act. Except as
65 otherwise provided in a contract between the subcontractor, any intermediate subcontractor, and
66 the general contractor, the subcontractor shall indemnify any intermediate subcontractor and the
67 general contractor for any wages, damages, interest, penalties, or attorneys’ fees owed as a result
68 of the subcontractor’s violations of this act, the Living Wage Act, and the Sick and Safe Leave
69 Act, unless those violations were due to the lack of prompt payment in accordance with the terms

70 of the contract between the subcontractor, any intermediate subcontractor, and the general
71 contractor.”.

72 (2) Paragraph 6 is amended to read as follows:

73 “(6) When a temporary staffing firm employs an employee who performs work on behalf
74 of or to the benefit of a client pursuant to a temporary staffing arrangement or contract for
75 services, both the temporary staffing firm and the client shall be jointly and severally liable for
76 violations of this act, the Living Wage Act, and the Sick and Safe Leave Act to the employee and
77 to the District. The District, the employee, or the employee's representative shall notify the
78 temporary staffing firm and client of the alleged violations at least 30 days before filing a claim
79 for these violations. Except as otherwise provided in a contract between the temporary staffing
80 firm and its client, the temporary staffing firm shall indemnify its client for any wages, damages,
81 interest, penalties, or attorneys’ fees owed as a result of the temporary staffing firm’s violations
82 of this act, the Living Wage Act, and the Sick and Safe Leave Act.”

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

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

85 “(a)(1) An employer who negligently fails to comply with the provisions of this act or the
86 Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall be fined:

87 “(A) For the first offense, an amount per affected employee of not more
88 than \$2,500;

89 “(B) For any subsequent offense, an amount per affected employee of not
90 more than \$5,000.

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

93 “(A) For the first offense, be fined not more than \$5,000 per affected
94 employee, or imprisoned not more than 30 days, or both; or

95 “(B) For any subsequent offense, be fined not more than \$10,000 per
96 affected employee, or imprisoned not more than 90 days, or both.

97 “(3) The fines set forth in paragraphs (1) and (2) of this subsection shall not be
98 limited by section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective
99 June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01).”.

100 (d) Section 8 (D.C. Official Code § 32-1308) is amended as follows:

101 (1) Paragraph (a)(1) is amended as follows:

102 (A) Strike the phrase “Any employee or person” and insert the phrase
103 “The Attorney General, or any employee or person” in its place.

104 (B) Strike the phrase “any entity” and insert the phrase “any labor
105 organization or association of employees” in its place.

106 (e) Section 8a (D.C. Official Code § 32-1308.01) is amended as follows:

107 (1) Subsection (c) is amended as follows:

108 (A) Paragraph (1) is amended by striking the word “deliver” and inserting
109 the word “mail” in its place.

110 (B) Paragraph (7) is amended by striking the word “delivered” and
111 inserting the word “mailed” in its place.

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

113 “(g) Appeals of any order made or fine assessed under this act, the Minimum Wage
114 Revision Act, the Sick and Safe Leave Act, or the Living Wage Act shall be made to the District
115 of Columbia Court of Appeals.”

116 (f) A new section 10b is added to read as follows:

117 “Sec. 10b. Rules.

118 “The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure
119 Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue
120 rules to implement the provisions of this act.”.

121 Sec. 3. The Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C.
122 Law 9-248; D.C. Official Code § 32-1001 *et seq.*), is amended as follows:

123 (a) Section 5(b)(5) (D.C. Official Code § 32-1004(b)(5)) is repealed.

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

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

126 (A) The lead-in language is amended to read as follows:

127 “Every employer subject to any provision of this subchapter or of any regulation
128 or order issued under this subchapter shall make, keep, and preserve for a period of not less than
129 3 years or the prevailing federal standard at the time the record is created, which shall be
130 identified in rules issued pursuant to this act, whichever is greater, a record of:”

131 (B) Subparagraph (D) is amended to read as follows:

132 “(D) The precise times worked each day and each workweek by each employee,
133 except for employees who are exempt from the minimum wage and overtime requirements under
134 section 5(a); and”

135 (2) Subsection (c) is amended by striking the phrase “shall furnish to each
136 employee at the time of hiring a written notice, both in English and in the employee’s primary
137 language, containing the following information” and inserting the phrase “shall furnish to each
138 employee at the time of hiring, and whenever any of the information contained in this written

139 notice changes, a written notice in English in the form made available by the Mayor pursuant to
140 subsection (e) of this section. If, pursuant to subsection (e) of this section, the Mayor has made
141 available a translation of the form in a language that the employer knows to be the employee’s
142 primary language or that the employee requests, the employer shall also furnish the written
143 notice to the employee in that language. The notice shall contain the following information:” in
144 its place.

145 (3) Subsection (d) is amended as follows:

146 (A) Paragraph (1) is amended to read as follows:

147 “(1) Within 90 days of the effective date of the Wage Theft Prevention
148 Amendment Act of 2014, enacted on September 19, 2014 (D.C. Act 20-426; 61 DCR 10157),
149 every employer, except as specified in section 9a, shall furnish each employee with a written
150 notice containing the information required under subsection (c) of this section. As proof of
151 compliance with this subsection and subsection (c) of this section, every employer shall retain
152 copies of the written notice furnished to employees that are signed and dated by the employer
153 and by the employee or copies of the written notice furnished to employees and an email from
154 the employee acknowledging receipt of the notice.”.

155 (B) Paragraph (3) is amended by striking the phrase “subsections (b) and
156 (c) of”.

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

158 “(e) The Mayor shall make available for employers a form of the notice required by
159 subsection (c) within 60 days of the effective date of the Wage Theft Prevention Amendment Act
160 of 2014, enacted on September 19, 2014 (D.C. Act 20-426; 61 DCR 10157). The Mayor also
161 shall make available for employers a translation of the form in any language required for vital

162 documents pursuant to section 4 of the Language Access Act of 2004, effective June 19, 2004
163 (D.C. Law 15-167; D.C. Official Code § 2-1933) and in any additional languages the Mayor
164 deems appropriate to carry out the purposes of this section.”.

165 (c) Section 9a (D.C. Official Code § 32-1008.01) is amended as follows:

166 (1) Section (a)(1) is amended by striking the phrase “containing the information
167 required by section 9(c)” and inserting the phrase “containing the information required by
168 section 9(c) and in the form made available by the Mayor pursuant to section 9(e). The notice
169 shall be provided in English and if, pursuant to section 9(e), the Mayor has made available a
170 translation of the form in a language that the temporary staffing firm knows to be the employee’s
171 primary language or that the employee requests, the temporary staffing firm shall also furnish
172 written notice to that employee in that second language.” in its place.

173 (2) Section 9a(b) is amended to read as follows:

174 “(b)(1) When a temporary staffing firm assigns an employee to perform work on behalf
175 of or to the benefit of a client, the temporary staffing firm shall furnish the employee a written
176 notice in English, in the form made available by the Mayor pursuant to subsection (c) of this
177 section, of:

178 “(A) The specific designated payday for the particular assignment;

179 “(B) The actual rate of pay for the assignment and the benefits, if any,
180 to be provided;

181 “(C) The overtime rate of pay the employee will receive, or, if
182 applicable, notice that the position is exempt from additional overtime compensation and the
183 basis for the overtime exemption;

184 “(D) The location and name of the client and the temporary staffing
185 firm;

186 “(E) The anticipated length of the assignment;

187 “(F) Whether training or safety equipment is required and who is
188 obligated to provide and pay for the equipment;

189 “(G) The legal entity responsible for workers’ compensation should the
190 employee be injured on the job; and

191 “(H) Information about how to contact the designated enforcement
192 agency for concerns about safety, wage and hour, or discrimination.

193 “(2) If, pursuant to subsection (c) of this section, the Mayor has made available a
194 translation of the form in a language that the temporary staffing firm knows to be the employee’s
195 primary language or that the employee requests, the temporary staffing firm shall also furnish
196 written notice to that employee in that language.”

197 (3) Section 9a(c) is amended to read as follows:

198 “(c) The Mayor shall make available for temporary staffing firms a form of the
199 notice required by subsection (b) of this section within 60 days of the effective date of the Wage
200 Theft Prevention Amendment Act of 2014, enacted on September 19, 2014 (D.C. Act 20-426; 61
201 DCR 10157). The Mayor also shall make available for temporary staffing firms a translation of
202 the form in any language required for vital documents pursuant to section 4 of the Language
203 Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1933)
204 and in any additional languages the Mayor deems appropriate to carry out the purposes of this
205 section.”

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

207 (1) Subsection (c) is amended to read as follows:

208 “(c) The Mayor shall make copies or summaries of this act publicly available on the
209 District government’s website within 60 days of the effective date of the Wage Theft Prevention
210 Amendment Act of 2014, enacted on September 19, 2014 (D.C. Act 20-426; 61 DCR 10157). An
211 employer shall not be liable for failure to post notice if the Mayor has failed to provide to the
212 employer the notice required by this section.”.

213 (e) Section 12 (D.C. Official Code § 32-1011) is amended by striking the phrase “or
214 whatever the prevailing federal standard is, whichever is greater” and inserting the phrase “or the
215 prevailing federal standard at the time the record is created, which shall be identified in rules
216 issued pursuant to this act, whichever is greater,” in its place.

217 (f) Section 13 (D.C. Official Code § 32-1012) is amended as follows:

218 (1) Paragraph (b)(2) is amended by striking the phrase “The court may award an
219 amount of liquidated damages less than treble the amount of unpaid wages, but not less than the
220 amount of unpaid wages. In any action commenced to recover unpaid wages or liquidated
221 damages, the employer shall demonstrate” and inserting the phrase “The court may award an
222 additional amount of liquidated damages less than treble the amount of unpaid wages, but not
223 less than the amount of unpaid wages, only if the employer demonstrates”.

224 (2) Subsection (c) is amended to read as follows:

225 “(c) A subcontractor, any intermediate subcontractor, and the general contractor shall be
226 jointly and severally liable to the subcontractor’s employees for the subcontractor’s violations of
227 this act, the Living Wage Act, and the Sick and Safe Leave Act. Except as otherwise provided in
228 a contract between the subcontractor, any intermediate subcontractor, and the general contractor,
229 the subcontractor shall indemnify any intermediate subcontractor and the general contractor for

230 any wages, damages, interest, penalties, or attorneys’ fees owed as a result of the subcontractor’s
231 violations of this act, the Living Wage Act, and the Sick and Safe Leave Act, unless those
232 violations were due to the lack of prompt payment in accordance with the terms of the contract
233 between the subcontractor, any intermediate subcontractor, and the general contractor.”.

234 (2) Subsection (f) is amended to read as follows:

235 “(f) When a temporary staffing firm employs an employee who performs work
236 on behalf of or to the benefit of a client pursuant to a temporary staffing arrangement or contract
237 for services, both the temporary staffing firm and the client shall be jointly and severally liable
238 for violations of this act to the employee and to the District. The District, the employee, or the
239 employee’s representative shall notify the temporary staffing firm and employer of the alleged
240 violations at least 30 days before filing a claim for these violations. Except as otherwise provided
241 in a contract between the temporary staffing firm and its client, the temporary staffing firm shall
242 indemnify its client for any wages, damages, interest, penalties, or attorneys’ fees owed as a
243 result of the temporary staffing firm’s violations of this act.”

244 (g) Section 12a (D.C. Official Code § 32-1011.01) is amended by striking the phrase
245 “liquidated damages of not less than \$1,000 and not more than \$10,000” and inserting the phrase
246 “all appropriate relief provided for under section 10a of the Wage Payment Act” in its place.

247 (h) Section 13(a) (D.C. Official Code § 32-1012(a)) is amended by striking the phrase
248 “according to” and inserting the phrase “according to, and with all the remedies provided under,”
249 in its place.

250 (i) Section 13a (D.C. Official Code § 32-1012.01) is amended by striking the phrase
251 “same procedure and available for a violation of the Wage Payment Act” and inserting the

252 phrase “same procedure and with the same remedies, including attorneys’ fees and other legal or
253 equitable relief, available for a violation of the Wage Payment Act” in its place.

254 Sec. 4. The Wage Theft Prevention Amendment Act of 2014, enacted on September 19,
255 2014 (D.C. Act 20-426; 61 DCR 10157), is amended by repealing section 7.

256 Sec 5. Conforming amendments.

257 (a) The Wage Theft Prevention Clarification Temporary Amendment Act of 2015 (B21-
258 0053) is repealed.

259 (b) The Wage Theft Prevention Correction and Clarification Temporary Amendment Act
260 of 2014, enacted on January 22, 2015 (D.C. Act 20-591; 61 DCR 1332), is repealed.

261 (c) All rules or forms issued in accordance with the Wage Theft Prevention Clarification
262 Temporary Amendment Act of 2015 (B21-0053) or the Wage Theft Prevention Correction and
263 Clarification Temporary Amendment Act of 2014, enacted on January 22, 2015 (D.C. Act 20-
264 591; 61 DCR 1332) shall continue in effect according to their terms until lawfully amended,
265 repealed, or modified.

266 Sec. 6. Fiscal impact statement.

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

270 Sec. 7. Effective date.

271 This act shall take effect following approval by the Mayor (or in the event of veto by the
272 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
273 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

274 24, 1973 (87 Stat. 813: D.C. Official Code § 1-206.02(c)(1)) and publication in the District of
275 Columbia Register.