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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 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 Emergency Amendment Act of 2020".

TITLE I. COVID-19 WORKPLACE SAFETY PROTECTIONS

Sec. 101. Definitions.

For the purposes of this title, the term:

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

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

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

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

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

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

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

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

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

66 (10) “PPE” means personal protective equipment.

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

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

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

74 Sec. 102. Employer policies and workplace protections.

75 (a) Beginning 7 days after the effective date of this title and during the public health
76 emergency, employers in the District shall adopt and implement social distancing and worker
77 protection policies to prevent transmission of COVID-19 in the workplace to adhere with the
78 requirements of Mayor’s Order 2020-080, or subsequent Mayor’s order. ~~For employees that are~~
79 ~~present in the workplace, employers shall:~~

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

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

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

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

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

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

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

98 ~~_____ (B) Except as provided in paragraph (5)(A) through (F) of this subsection,~~
99 ~~require, at minimum, employees to wear the cloth face coverings or face masks provided~~
100 ~~pursuant to subparagraph (A) of this paragraph whenever the employee is or is likely to be fewer~~
101 ~~than 6 feet from another individual;~~

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

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

105 ~~(5) Require, at minimum, customers, contractors, vendors, and other visitors to~~
106 ~~the workplace to properly wear face coverings whenever they are or are likely to be fewer than 6~~

107 ~~feet from another individual, provided, that the following persons are not required to wear face~~
108 ~~coverings:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

136 Sec. 103. Retaliation prohibited.

137 (a) No employer or agent thereof may take an adverse employment action against an
138 employee for the employee's refusal to serve a customer or client, or to work within 6 feet of an
139 individual, who is not complying with the workplace protections in section 102.

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

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

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

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

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

149 (2) Nothing in this title prohibits an employer from requiring an employee who
150 has tested positive for COVID-19 to refrain from entering the workplace until a medical

151 professional has cleared the employee to return to the workplace or until a period of quarantine
152 recommended by the Department of Health or CDC has elapsed.

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

156 Sec. 104. Enforcement.

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

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

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

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

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

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

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

179 (A) Reasonable attorneys' fees and costs;

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

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

183 (D) Equitable relief as may be appropriate.

184 Sec. 105. Preemption.

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

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

192 TITLE II. PERSONAL PROTECTIVE EQUIPMENT GRANT PROGRAM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

230 “Sec. 202. (a)(1) The Chief Procurement Officer, or designee, shall have the authority
231 during the public health emergency and for 90 days thereafter to enter into an indefinite-
232 delivery/indefinite quantity contract (“IDIQ contract”) for PPE, sanitization and cleaning
233 products, related equipment, or other goods or supplies in furtherance of the District’s COVID-
234 19 recovery efforts that permit an entity that is, or is similar to, a local business enterprise as that
235 term is defined in section 2302(16) of the Small and Certified Business Enterprise Development
236 and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code §
237 2-218.01 et seq.) (“CBE Act”), to place orders under the IDIQ contract at the prices specified in
238 the IDIQ contract.

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

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

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

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

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

252 TITLE III. FISCAL IMPACT AND EFFECTIVE DATE

253 Sec. 301. Fiscal impact statement.

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

257 Sec. 302. Effective date.

258 This act shall take effect following approval by the Mayor (or in the event of veto by the
259 Mayor, action by the Council to override the veto), and shall remain in effect for no longer than
260 90 days, as provided for emergency acts of the Council of the District of Columbia in section
261 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;
262 D.C. Official Code § 1-204.12(a)).

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