

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT
COMMITTEE REPORT

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

TO: All Councilmembers
FROM: Councilmember Elissa Silverman,
Chairperson, Committee on Labor and Workforce Development
DATE: Month xx, 2020
SUBJECT: Report on B23-0500, the “Unemployment Compensation Employer Classification Amendment Act of 2020”

The Committee on Labor and Workforce Development, to which B23-0500 the “Unemployment Compensation Employer Classification Amendment Act of 2020” was referred, reports **favorably** thereon with amendments, and recommends its approval by the Council.

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I. BACKGROUND AND NEED

B23-0500, the “Unemployment Compensation Employer Classification Amendment Act of 2020,” was introduced by Chairman Phil Mendelson at the request of the Mayor on October 9, 2019.

The legislation conforms the District’s unemployment compensation law with the requirements of federal law in two ways. First, the bill would bring the District into compliance with state law requirements set in the Federal Unemployment Tax Act (FUTA) by expanding the definition of employment and by permitting government entities and instrumentalities to make payments into the District Unemployment Fund. Presently, the District’s unemployment law says that "employment" includes service performed by an individual in the employ of the District or any of its instrumentalities for a hospital or institution of higher education.¹ It also includes service in the employ of the District and one or more states or their instrumentalities for a hospital or institution of higher education. However, someone working for any of the fifty states or a state’s

¹ “Instrumentality” is another word for a government agency or entity.

instrumentality – for example, someone teaching state university students in Washington, DC – was previously not covered by the law and would be denied unemployment benefits. This is now more necessary than ever as employees have become more mobile over the last several decades. The draft language is broad so as to encompass all possible entities that are operated by states.

Second, the bill conforms District law with requirements of the Federal Pandemic Unemployment Compensation (FPUC) provisions passed as part of the federal Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The CARES Act provides that employers cannot be charged for payments under FPUC since that program is purely federally funded. District law currently says that FPUC benefits paid to eligible claimants during a period of national emergency shall not negatively impact the experience rating of the claimant’s employer, but that “employers electing to become liable for payments in lieu of contributions shall be charged.” In order to avoid employers’ confusion and corrective action by the U.S. Department of Labor, the portion regarding an employer’s election and liability will be removed.

COMMITTEE PRINT:

The introduced version of the bill would bring the District into compliance with state law requirements set in the Federal Unemployment Tax Act. It expands the definition of employment and permits government entities and instrumentalities to make payments into the District Unemployment Fund.

The print adds citations to federal law, revises the language for clarity, and accords with the Council’s legislative drafting conventions. It also adds another provision that was necessary to conform District unemployment law with the Federal Pandemic Unemployment Compensation program (FPUC), a provision of the CARES Act, related to employer charging for unemployment claims.

II. LEGISLATIVE CHRONOLOGY

October 09, 2019	B23-0500 Introduced by Chairman Mendelson
October 18, 2019	Notice of Intent to Act on B23-0500 Published in the District of Columbia Register
October 22, 2019	Referred to Committee on Labor and Workforce Development
July 20, 2020	Notice of Hearing filed in the Office of Secretary
July 24, 2020	Revised Notice of Hearing Published in the District of Columbia Register
September 16, 2020	Public Hearing on B23-0500 (First of two hearing dates)
September 25, 2020	Revised Notice of Public Hearing filed in the Office of Secretary
September 30, 2020	Public Hearing on B23-0500 (Second of two hearing dates)
October 27, 2020	Consideration and vote on B23-0500 by the Committee on Labor and Workforce Development

III. POSITION OF THE EXECUTIVE

Department of Employment Services (DOES) Director Unique Morris-Hughes testified in support of the legislation.

IV. HEARING RECORD AND SUMMARY OF TESTIMONY

The only testimony received regarding this bill was by the Department of Employment Services (DOES) Director Unique Morris-Hughes. The Director testified that the agency discovered a need for this conforming legislation was discovered when an otherwise qualified former employee of a state university was unable to receive unemployment benefits in the District. She said that the amendment would “allow all eligible District workers to receive benefits and to ensure that all eligible employers are appropriately contributing to the unemployment trust fund.”

VI. IMPACT ON EXISTING LAW

B23-0500 amends the District of Columbia Unemployment Compensation Act to expand the definition of employment to include service in the employ of states or their political subdivision, federally recognized Indian tribes, and certain agents of those jurisdictions. The legislation would also provide government entities and agents with the ability to make payments into the District Unemployment Fund, in lieu of contributions otherwise required under the DC Unemployment Compensation. It will also fix a provision of the Unemployment Compensation Act that erroneously suggests employers could be charged for claimants’ benefits under the Federal Pandemic Unemployment Compensation (FPUC) program.

VII. FISCAL IMPACT STATEMENT

The attached fiscal impact statement issued by the District’s Chief Financial Officer states that funds are sufficient in the FY2021 budget and proposed FY 2022 through FY 2024 budget and financial plan to implement the bill.

VIII. SECTION BY SECTION ANALYSIS

Section 1 provides the short title of the measure.

Section 2 revises a portion of the unemployment law that previously did not include states, their instrumentalities, their political subdivisions, or Indian tribes so that services performed for these entities counts as covered employment. The section also defines “Indian tribes.”

Section 3 corrects a provision of the Unemployment Compensation Act that erroneously suggests employers could be charged for claimants’ benefits under the Federal Pandemic Unemployment Compensation (FPUC) program by removing the incorrect language.

Section 4 adopts the fiscal impact statement.

Section 5 establishes the effective date.

IX. COMMITTEE ACTION

The Committee on Labor and Workforce Development convened at ___ a.m. on DATE, XX, 2020, to consider and vote on B23-0500. Chairperson Silverman recognized the presence of a quorum, consisting of herself and Councilmembers XXXXX.

Chairperson Silverman moved B23-0500 and opened the floor for discussion.

Summary here.

Discussion having ended, Chairperson Silverman then moved the proposed committee print and report for B23-0500, with leave for the Committee staff to make technical and conforming amendments.

After opportunity for discussion, the members voted as follows:

Vote

Chairperson Elissa Silverman

Councilmember Charles Allen

Councilmember David Grosso

Councilmember Kenyan McDuffie

Councilmember Robert C. White

Thus, the committee print and accompanying report were passed, with the Members present voting _____.

The committee meeting adjourned at ___ p.m.

X. ATTACHMENTS

1. B23-0500 as introduced
2. Notice of Intent to Act
3. Public hearing notice for B23-0500
4. Public hearing agenda, witness list, and testimony from the October 30, 2020 hearing
5. Fiscal Impact Statement
6. Legal sufficiency determination
7. Comparative Print of B23-0500
8. Committee Print of B23-0500