

AN AMENDMENT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Date: OCTOBER 2, 2018

Offered by:

To: Bill 22-913, The Tipped Wage Workers Fairness Amendment Act of 2018

Version:
___ Introduced
___ Committee Report
_X Committee Print
___ First Reading
___ Amended First Reading
___ Engrossed
___ Enrolled
___ Amendment in Nature of Substitute

Amending:

- Sections 4 through 6 (lines 136-204, pages 5-8) are amended to read as follows::

“Sec. 4. The Small and Certified Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 et seq.), is amended as follows:

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

“Sec. 2316. Study on incentivizing new retail stores and food establishments in Wards 7 and 8.”.

41 “(b) Section 2302 (D.C. Official Code § 2-218.02) is amended as follows:

42 “(1) Paragraph (9A) is redesignated as paragraph (9B).

43 “(2) A new paragraph (9A) is added to read as follows:

44 “(9A) “Food establishment” shall have the same meaning as provided in section
45 2(5) of An Act Relating to the adulteration of foods and drugs in the District of Columbia,
46 approved February 17, 1898 (30 Stat. 246; D.C. Official Code § 48-102(5)).”.

47 “(c) Section 2313(a) (D.C. Official Code § 2-218.13(a)) is amended by adding a new
48 paragraph (3) to read as follows:

49 “(3) The Department shall provide career training services to local business
50 owners seeking to open a food establishment, including:

51 “(A) Training on the opening and management of a food establishment;

52 “(B) One-on-one small business enterprise coaching;

53 “(C) Vocational training for individuals seeking employment and
54 advancement in the food establishment industry; and

55 “(D) Small business enterprise incubation.”.

56 “(d) A new section 2316 is added to read as follows:

57 “Sec. 2316. Study on incentivizing new retail stores and food establishments in Wards 7
58 and 8.

59 “(a) The Department shall enter into a contract with a non-governmental entity to conduct
60 a study evaluating incentives for the development of new retail stores and food establishments in
61 Wards 7 and 8. The study shall include:

62 “(1) An assessment of the extent to which the following programs can be used to
63 incentivize the development of new retail stores and food establishments in Wards 7 and 8:

64 “(A) Washington Area Community Investment Fund;

65 “(B) Certified Capital Companies Program;

66 “(C) Work Opportunity Tax Credit; and

67 “(D) Storefront Improvement Program.

68 “(2) Recommendations to the Department regarding programs the agency may
69 implement to incentivize the development of new retail stores and food establishments in Wards
70 7 and 8.

71 “(3) Recommendations to the Council regarding legislative actions it may take to
72 incentivize the development of new retail stores and food establishments in Wards 7 and 8.

73 “(b) Within 180 days after the applicability date of the Tipped Wage Workers Fairness
74 Amendment Act of 2018, as approved by the Committee of the Whole on October 2, 2018
75 (Committee print of Bill 22-913), the Department shall select a non-governmental contractor to
76 conduct the study required pursuant to subsection (a) of this section.

77 “(c) Within one year after the applicability date of the Tipped Wage Workers Fairness
78 Amendment Act of 2018, as approved by the Committee of the Whole on October 2, 2018
79 (Committee print of Bill 22-913), the outside contractor shall submit the study required pursuant
80 to subsection (a) of this section to the Council.”

81 _“Sec. 5. Chapter 2, Title 25 of the District of Columbia Official Code is amended to add
82 a new § 25–213 as follows:

83 “§ 25–213. Mandatory sexual harassment training.

84 “(a)(1) ABRA shall create a sexual harassment training course (“training”) for employees
85 of businesses with ABRA licenses covered by § 25-113(b)-(e) (“covered businesses”). ABRA

86 may conduct the training itself or certify community organizations to conduct such training that
87 meets the requirements of this section.

88 “(2) ABRA shall consult with groups representing victims, workers, and
89 employers to create the training.

90 “(3) The training shall be conducted in person.

91 “(4) The training shall include how to respond to, intervene in, and prevent sexual
92 harassment of coworkers, management, and patrons.

93 “(b)(1) Employees of covered businesses shall receive the training according to the
94 following schedule:

95 “(A) Each employee shall receive the training within 90 days of hire,
96 unless the employee has taken the training within the past two years.

97 “(B) Employees of a covered business hired before the applicability date
98 of this section shall have two years from the applicability date of this section to take the training.

99 “(C) Managers must take the training at least once every 2 years.

100 “(2) Members of the public may take the training for a fee.

101 “(c) ABRA shall maintain records of each person who has taken the training for at least
102 five years.

103 “(d) All covered businesses shall:

104 “(1) By July 1, 2019, file with ABRA a policy outlining how employees can
105 report instances of sexual harassment to covered businesses’ management and to the Office of
106 Human Rights.

107 “(2) By July 1, 2019, distribute the sexual harassment policy to employees and
108 post the policy in their workplaces at all times;

109 “(3) Beginning on the effective date of this section, document instances of sexual
110 harassment reported to the covered business’s management, including whether the reported
111 harasser was a patron, non-managerial employee, or manager.

112 “(4) Beginning July 1, 2019, and annually thereafter, report to ABRA and to the
113 Office of Human Rights the number of instances of harassment reported to management and the
114 total number of reported harassers who were patrons, non-managerial employees, or managers.

115 “(e) Covered businesses that violate this section, or that employ employees who have not
116 completed the training requirements in subsection (b) of this section, shall be subject to a fine
117 under Chapter 8 of this title as a secondary tier violation.”

118 “Sec. 6. The Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C.
119 Law 9-248; D.C. Official Code § 32-1001 *et seq.*), is amended as follows:

120 “(a) Section 3 (D.C. Official Code § 32-1002) is amended as follows:

121 “(1) Paragraph (1) is redesignated as paragraph (1A);

122 “(2) A new paragraph (1) is added to read as follows:

123 “(1) The term “bartender” means an employee who:

124 “(A) Receives gratuities.;

125 “(B) Is classified in the broad occupation category of “bartenders,” or
126 subsequent equivalent category or broad occupation, as defined in the U.S. Bureau of Labor
127 Statistics’ Standard Occupational Classification system; and

128 “(C) Works in a food or beverage establishment.”

129 “(2) A new paragraph (3A) is added to read as follows:

130 “(3A) The term “food or beverage establishment” means an establishment
131 operating under an on-premises retailer’s license, described in D.C. Official Code § 25-
132 113(b)-(e).

133 “(3) A new paragraph (7B) is added to read as follows:

134 “(7B) The term “server” means an employee who:

135 “(A) Receives gratuities.;

136 “(B) Is classified in the broad occupation category of “waiter or waitress,”
137 or subsequent equivalent category or broad occupation, as defined in the U.S. Bureau of Labor
138 Statistics’ Standard Occupational Classification system; and

139 “(C) Works in a food or beverage establishment.

140 “(b) Section 4 (D.C. Official Code § 32–1003) is amended as follows:

141 “(1) Subsection (f) is amended to read as follows:

142 “(f)(1) The minimum hourly wage required to be paid by an employer to an employee
143 who receives gratuities but who is not a server or bartender shall:

144 “(A) Be \$5.00 as of July 1, 2019; and

145 “(B) Increase annually thereafter by \$1.40 until the employee’s wage
146 equals the minimum hourly wage set under subsection (a) of this section, at which point an
147 employee covered by this paragraph shall receive the minimum hourly wage prescribed by
148 subsection (a) of this section.

149 “(2) The minimum hourly wage required to be paid by an employer to a server or
150 bartender shall:

151 (A) Be \$4.45 as of July 1, 2019;

152 (B) Be \$5.00 as of July 1, 2020;

153 (C) “Beginning on July 1, 2021, and no later than July 1 of each successive year,
154 increase in proportion to the annual average increase, if any, in the Consumer Price Index for All
155 Urban Consumers in the Washington Metropolitan Statistical Area published by the Bureau of
156 Labor Statistics of the United States Department of Labor for the previous calendar year. Any
157 increase under this paragraph shall be adjusted to the nearest multiple of \$.05.”“(3)
158 Notwithstanding paragraphs (1) and (2) of this subsection, where, during a given workweek, the
159 sum of an employee’s gratuities plus the wage paid pursuant to this subsection is less than the
160 wage prescribed under subsection (a) of this section multiplied by the number of hours the
161 employee worked, the employer shall pay the difference to the employee.

162 “(4) No employee, other than servers and bartenders, may be paid pursuant to this
163 subsection after July 1, 2030.”

164 “(2) Subsection (g) is amended to read as follows:

165 “(g) Subsection (f) of this section shall not apply to an employee who receives gratuities,
166 unless:

167 “(1) The employer has provided the employee with notice of the following,
168 included in the notice furnished pursuant to section 9(c):

169 “(A) The provisions of subsection (f) of this section; and

170 “(B) If gratuities are pooled, the employer’s pooling structure, including
171 the calculation of any payments that the employee will receive as a percentage of total gratuities
172 or sales;

173 “(2) If the employer uses tip pooling, the employer has posted the pooling
174 structure pursuant to section 10(a); and

175 “(3) All gratuities received by the employee have been retained by the employee,
176 except that this provision shall not be construed to prohibit the pooling of gratuities among
177 employees who customarily receive gratuities.”

178 “(c) Section 8(1) (D.C. Official Code § 32–1007.01)(1) is amended by striking the phrase
179 “received, categorized” and inserting the phrase “received, including pursuant to the reporting
180 system established pursuant to section 6(a-2) of An Act to provide for the payment and
181 collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 976; D.C.
182 Official Code § 32-1306(a-2)), categorized” in its place.

183
184 “(d) Section 6 (D.C. Official Code § 32–1008) is amended as follows:

185 “(1) Subsection (b) is amended as follows:

186 “(b)(1) Every employer shall furnish to each employee at the time of payment of wages
187 an itemized statement showing the:

188 “(A) Date of the wage payment;

189 “(B) Gross wages paid;

190 “(C) Deductions from and additions to wages, including a separate
191 item for gratuities;

192 “(D) Net wages paid;

193 “(E) Hours worked during the pay period; and

194 “(F) Any other information as the Mayor may prescribe by
195 regulation.

196 “(2) For the purpose of this subsection, the term “wage” includes
197 gratuities.”

198 “(2) Subsection (c)(4) is amended by striking the phrase “, and the applicable
199 prevailing wages;” and inserting the phrase “, the applicable prevailing wages, and the structure
200 of any tip pool consistent with the requirements of section 3(g)(1)(B);” in its place.

201 “(e) Section 10a (D.C. Official Code § 32–1009.01) is amended to read as follows:

202 “§ 32–1009.01. Reporting requirements for employers of employees who receive
203 gratuities.

204 “(a)(1) An employer who employs an employee who is paid in accordance with section
205 3(f) shall submit a quarterly earnings report within 30 days after the end of each quarter to the
206 Mayor certifying that the employee was paid at least the required minimum wage, including
207 gratuities pursuant to section 3,.

208 “(2) Each quarterly report shall provide the employee’s wages, gratuities, and
209 total earnings information for each week an employee worked.

210 “(b)(1) The Mayor shall create an Internet-based portal for online reporting of the
211 quarterly earnings reports required by subsection (a) of this section.

212 “(A) As of January 1, 2021, the portal must accept quarterly earnings
213 reports filed electronically directly by payroll service companies.

214 “(2)(A) An employer shall submit its quarterly earnings reports online unless the
215 employer claims that online reporting creates a hardship, in which case the employer shall
216 submit its reports in hard-copy form.

217 “(B) As of January 1, 2023, all employers covered by this section must use
218 a payroll service that allows for automatic filing of the quarterly earnings reports required under
219 this section.

220 “(3) The Mayor shall provide reporting requirements training to educate
221 employers about the reporting requirements and use of the Internet-based portal.

222 “(c) The Mayor shall:

223 “(1) Perform random reporting audits after each quarterly report deadline to
224 ensure compliance with section 3(f), and focus investigations on employers covered under this
225 section that do not use Internet-based payroll services; and

226 “(2) Submit a quarterly report to the Council of the compliance data collected.”

227 “(f) A new section 16a is added to read as follows:

228 “Sec 16a. Tipped Wage Worker Task Force.

229 “(a)(1) There is established the Tipped Wage Worker Task Force (“Task Force”) to
230 evaluate the effect of the Tipped Wage Worker Fairness Amendment Act of 2018. The Task
231 Force shall be comprised of the following members:

232 “(A) The Director of Employment Services;

233 “(B) Two representatives of the restaurant industry, one appointed by the
234 Mayor and one appointed by the Chairman of the Council;

235 “(C) Two representatives of restaurant worker community, one appointed
236 by the Mayor and one appointed by the Chairman of the Council; and

237 “(D) Two researchers with experience in workforce issues or economic
238 analysis from non-governmental organizations, one appointed by the Mayor and one appointed
239 by the Chairman of the Council.

240 “(2) Members nominated under provisions (b)(1)(B) through (D) shall be
241 approved by the Council.

242 “(3) Each member shall serve without compensation, except that members may
243 receive reimbursement for expenses incurred in the service of the Task Force.

244 “(4) The Department of Employment Services shall provide administrative
245 support for the Task Force, including contracting support.

246 “(5) The Task Force, by majority vote shall, develop a request for proposals and
247 enter into a contract with a non-governmental entity (“contractor”) to conduct a study evaluating
248 the impact of the Tipped Wage Workers Fairness Amendment Act of 2018, on each industry
249 sector affected, which shall compare the following statistics from the calendar year preceding the
250 effective date of the Act and the year in which the study is completed:

251 “(A) The number of employees in each industry sector affected;

252 “(B) The median and mean hourly compensation received by employees in
253 each industry sector affected;

254 “(C) The median and mean annual compensation received by employees
255 in each industry sector affected;

256 “(D) The number of businesses and the number of individual
257 establishments operating in the District in each industry sector affected; and

258 “(E) The number of women and minority-owned businesses operating in
259 each industry sector affected.

260 “(6) The Task Force shall not meet until ten years after the effective date of the
261 Tipped Worker Wage Fairness Act of 2018.

262 “(7) Within three months after its first meeting, the Task Force shall select the
263 contractor.

264 “(8) The contractor shall submit the study required pursuant to subsection (a) of
265 this section to the Council no more than six months after being awarded the contract.

266 “(9) The Task Force shall dissolve once the contractor submits the study to the
267 Council.”

268 • Sections 7 and 8 (lines 205-214, page 8) are redesignated as sections 9 and 10, respectively.

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270 • New sections 7 and 8 are added as follows:

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272 “Sec. 7. An Act To provide for the payment and collection of wages in the District of
273 Columbia, approved August 3, 1956 (70 Stat. 977; D.C. Official Code § 32-1301 *et seq.*), is
274 amended as follows:

275 “(a) Section 6 (D.C. Official Code § 32-1306) is amended as follows:

276 “(1) Subsection (a-1) is amended by striking the phrase “the employee or
277 person’s” and inserting “his or her” in its place.

278 “(2) Add a new section (a-2) to read as follows:

279 “(a-2)(1) The Mayor shall create a reporting system to receive reports from the public of
280 violations of provisions of this act, the Living Wage Act, the Sick and Safe Leave Act, and the
281 Minimum Wage Revision Act.

282 “(2) The reporting system shall:

283 “(A) Be accessible to the public by internet and telephone 24 hours each
284 day, 7 days each week for the entire calendar year; and

285 “(B) Allow for anonymous reporting.

286 “(3) The Mayor shall review all reports collected on the reporting system on a
287 weekly basis.

288 “(4) Pursuant to the investigative authority conferred in subsection (a) of this
289 section, the Mayor may investigate whether violations reported through the reporting system
290 established by this subsection have occurred.”

291 “(3) Subsection (e) is amended to read as follows:

292 “(e)(1) Every employer shall furnish to each employee at the time of payment of wages
293 an itemized statement showing the:

294 “(A) Date of the wage payment;

295 “(B) Gross wages paid;

296 “(C) Deductions from and additions to wages, including a separate item
297 for gratuities;

298 “(D) Net wages paid;

299 “(E) Hours worked during the pay period; and

300 “(F) Any other information as the Mayor may prescribe by regulation.

301 “(2) For the purpose of this subsection, the term “wage” includes gratuities”

302 “(b) Section 8a(b)(2) (D.C. Official Code § 32-1308.01) is amended by striking the word
303 “sworn” and inserting the phrase “sworn, but need not be notarized,” in its place.”

304 “Sec. 8. Applicability.

305 “(a) This act shall apply upon the date of inclusion of their fiscal effect in
306 an approved budget or financial plan.

307 “(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect
308 in an approved budget and financial plan, and provide notice to the Budget Director of the
309 Council of the certification.

310 “(c)(1) The Budget Director shall cause the notice of the certification to be published in
311 the District of Columbia Register.

312 “(2) The date of publication of the notice of the certification shall not affect the
313 applicability of this section.”

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