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Chairman Phil Mendelson

Councilmember Elissa Silverman

Councilmember Mary M. Cheh

Councilmember Jack Evans

Councilmember Brianne K. Nadeau

Councilmember Charles Allen

Councilmember Anita Bonds

Councilmember Trayon White, Sr.

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To ban the use of non-compete provisions in employment agreements and workplace policies, to protect employees’ right to make a complaint or file a court case, and to bar employers from retaliating against employees who inquire about their rights; to amend An Act to provide for the payment and Collection of wages in the District of Columbia to add the Ban on Non-Compete Agreements Amendment Act of 2019 provisions to existing employee rights that are enforceable via a private action, via administrative enforcement, and by the Attorney General acting in the public interest, and to specify statutory penalties and relief.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Ban on Non-Compete Agreements Amendment Act of 2019”.

TITLE I. BAN ON NONCOMPETE AGREEMENTS AND POLICIES.

Sec. 101. This title shall be cited as the “Ban on Noncompete Agreements Act of 2019”.

Sec. 102. Definitions.

43 For the purposes of this title, the term:

44 (1) "Employee" shall have the same meaning as provided in section 3(2) of the
45 Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C.
46 Official Code § 32-1002(2)).

47 (2) "Employer" shall have the same meaning as provided in section 3(3) of the
48 Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C.
49 Official Code § 32-1002(3)).

50 (3) "Non-compete provision" means a term of a written agreement between an
51 employer and an employee that restricts or bars the employee from being simultaneously or
52 subsequently employed by another employer:

53 (A) In a particular geographic region; or

54 (B) For an indefinite or specified period of time.

55 (4) "Regular rate of pay" means (a) the wages paid per hour to a worker,
56 excluding any premium payments received for hours worked over 40 hours per week, or (b) if
57 the wages are paid on an alternate basis such as salary, commission, or piece work, the average
58 amount paid per hour worked during the most recent calendar quarter, which shall be determined
59 by dividing the total amount paid during the calendar quarter by the total number of hours
60 worked in the calendar quarter.

61 (5) "Retaliation" means an adverse employment action, including a threat, verbal
62 warning, written warning, reduction of work hours, suspension, or termination, that an employer
63 takes against an employee for exercising or attempting to exercise a right guaranteed under this
64 title.

65 (6) “Workplace policy” means the rules and restrictions that an employer imposes
66 on one or more employees, whether written or in practice.

67 Sec. 103. Non-compete rights and restrictions.

68 (a) No employer shall require an employee whose regular rate of pay, or prospective
69 employee whose prospective regular rate of pay, is less than or equal to 3 times the minimum
70 wage provided for in section 4 of the Minimum Wage Act Revision Act of 1992, effective March
71 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1003), to sign an agreement which includes
72 a non-compete provision.

73 (b) A non-compete provision contained in an agreement between an employee whose
74 regular rate of pay is less than or equal to 3 times the minimum wage provided for in section 4 of
75 the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C.
76 Official Code § 32-1003), and an employer shall be void as a matter of law, provided, that the
77 agreement was entered into on or after the effective date of this title.

78 (c) An employer shall not have a workplace policy that limits the right of employees
79 whose regular rate of pay is less than or equal to 3 times the minimum wage provided for in
80 section 4 of the Minimum Wage Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-
81 248; D.C. Official Code § 32-1003), from being simultaneously or subsequently employed by
82 another employer in a particular geographic region or for an indefinite or specified period of
83 time.

84 (d) No employer shall retaliate against an employee for:

85 (1) The employee’s alleged failure to comply with a non-compete provision or
86 workplace policy that violates this title; or

87 (2) Asking or informing the employer, a prospective employer, a coworker, legal
88 counsel, or a governmental entity about the existence, applicability, or validity of a non-compete
89 provision in an agreement or workplace policy that an employee reasonably believes violates this
90 title, including in a formal written complaint.

91 (e) Nothing in this title is intended to impair an employer's ability to place reasonable
92 restrictions on an employee's right to request or use leave from work, provided such restrictions
93 do not violate the laws of the District of Columbia or the United States.

94 Sec. 104. Penalties and relief.

95 (a) An employer who violates section 103 shall be liable for employee relief as follows:

96 (1) An employer who violates section 103(a) or (c) shall be separately liable for
97 each violation, to each employee subjected to the violation, for monetary relief in an amount not
98 less than \$500 and not greater than \$1,000.

99 (2) An employer who attempts to enforce a non-compete provision that is void as
100 provided in section 103(b) of this title shall be liable to each employee against whom the non-
101 compete provision was enforced in an amount not less than \$1,500.

102 (3) An employer who retaliates against one or more employees in violation of
103 section 103(d) shall be separately liable for each instance of retaliation to each employee subject
104 to retaliation in an amount not less than \$1,000 and not more than \$2,000.

105 (b) The Mayor may assess a penalty of up to \$500 for each violation of this title, except
106 that each violation of section 103(d) assessed against an employer shall be no less than \$1,000.

107 TITLE II. ENFORCEMENT OF THE BAN ON NON-COMPETE AGREEMENTS ACT
108 OF 2019.

109 Sec. 201. An Act to provide for the payment and Collection of wages in the District of
110 Columbia, approved August 3, 1956 (70 Stat. 620); D.C. Official Code § 32-1301 *et seq.*), is
111 amended as follows:

112 (a) Section 1 (D.C. Official Code § 32-1301) is amended by adding a new paragraph (2D)
113 to read as follows:

114 “(2D) “Ban on Non-Compete Agreements Amendment Act” means the Ban on
115 Non-Compete Agreements Act of 2019, introduced on October 8, 2019 (Bill ____).”.

116 (b) Section 6 (D.C. Official Code § 32-1306) is amended as follows:

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

118 (A) Paragraph (1) is amended by striking the phrase “this act, the Living
119 Wage Act,” both times it appears and inserting the phrase “this act, the Ban on Non-Compete
120 Agreements Act, the Living Wage Act,” in its place.

121 (2) Paragraph (2)(A) is amended by striking the phrase “this act, the Minimum
122 Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act” and inserting the
123 phrase “this act, the Ban on Non-Compete Agreements Amendment Act, the Living Wage Act,
124 the Minimum Wage Revision Act, or the Sick and Safe Leave Act.” in its place.

125 (3) Subsection (a-1) is amended by striking the phrase “the Living Wage Act, the
126 Minimum Wage Revision Act” and inserting the phrase “the Ban on Non-Compete Agreements
127 Amendment Act, the Living Wage Act, the Minimum Wage Revision Act,” in its place.

128 (4) Subsection (b)(2) is amended by striking the phrase “this act, the Living Wage
129 Act, the Sick and Safe Leave Act, or the Minimum Wage Revision Act” and inserting the phrase
130 “of this act, the Ban on Non-Compete Agreements Amendment Act, the Living Wage Act, the
131 Minimum Wage Revision Act, or the Sick and Safe Leave Act” in its place.

132 (5) Subsection (d)(2)(A) is amended by striking the phrase “this act, the Living
133 Wage Act, the Sick and Safe Leave Act, and the Minimum Wage Revision Act” and inserting the
134 phrase “this act, the Ban on Non-Compete Agreements Amendment Act, the Living Wage Act,
135 the Minimum Wage Revision Act, and the Sick and Safe Leave Act” in its place.

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

137 (1) Subsection (a)(1)(A) is amended as follows:

138 (A) The lead-in language is amended by striking the phrase “or the Living
139 Wage Act” both times it appears and inserting the phrase “the Ban on Non-Compete Agreements
140 Act, or the Living Wage Act” in its place.

141 (B) Subparagraph (vi) is amended by striking the phrase “or the Living
142 Wage Act” and inserting the phrase “the Ban on Non-Compete Agreements Amendment Act, or
143 the Living Wage Act” in its place.

144 (2) Subsection (c)(1) is amended by striking the phrase “or the Living Wage Act”
145 both times it appears and inserting the phrase “the Ban on Non-Compete Agreements Act, or the
146 Living Wage Act” in its place.

147 TITLE III. FISCAL IMPACT AND EFFECTIVE DATE.

148 Sec. 301. Fiscal impact statement.

149 The Council adopts the fiscal impact statement in the committee report as the fiscal
150 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
151 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

152 Sec. 302. Effective date.

153 This act shall take effect following approval by the Mayor (or in the event of veto by the
154 Mayor, action by the Council to override the veto), a 30-day period of congressional review as

155 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
156 24, 1973 (87 Stat. 813: D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
157 Columbia Register.