

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services



Public Hearing On

Bill 23-494, the “Ban on Non-Compete Agreements Amendment Act of 2019”

Testimony of
Dr. Unique Morris-Hughes
Director

Before the

Committee on Labor & Workforce Development
Council of the District of Columbia
The Honorable Elissa Silverman, Chairperson

December 6, 2019
10:00 AM
Room 500
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

The Department of Employment Services (DOES) submits the following written statement for the record regarding Bill 23-494, the “Ban on Non-Compete Agreements Amendment Act of 2019.”

The stated purpose of the “Ban on Non-Compete Agreements Amendment Act of 2019” (the “Act”) is to protect District workers who earn up to three times the hourly minimum wage from having to sign a non-compete agreement. The Act would also ban non-compete language in employer policy manuals or handbooks. As of October 2019, three states—California, Oklahoma, and North Dakota—currently prohibit employee non-compete agreements from being entered into or enforced.¹ Other states, including Maryland and New Hampshire, have passed laws exempting low-wage employees from non-compete clauses. In Maryland, low wage workers are defined as those making less than \$15 per hour or \$31,200. In New Hampshire, low wage workers are defined as those who earn less than or equal to two times the minimum applicable wage, whether federal or state, for tipped workers. By comparison, the proposed Act is more expansive, exempting employees whose regular rate of pay is three times the minimum wage.

If this Act is enacted, DOES would be responsible for implementing and administering the legislation as the agency responsible for implementing the Living Wage Act, the Sick and Safe Leave Act, and the Minimum Wage Revision Act. Implementation and administration would require additional funding and the drafting of new regulations. Specifically, DOES would be required to draft regulations that require both investigations and the implementation of random audits to ensure compliance with the proposed Act. In addition to investigatory requirements, DOES would be obligated to develop regulations related to the assessment of

¹ <https://www.faircompetitionlaw.com/wp-content/uploads/2019/10/Noncompetes-BRR-50-State-Survey-Chart-20191019.pdf>

penalties and public guidance for employers on their obligations under the Act. Regulation development to implement similar laws has taken about a year. Additionally, under the Act, employees would be able to recover damages from an employer that violated their rights.

Based on a review of existing District employment data, DOES anticipates that over 200,000 information technology; professional, scientific, and technical services; finance; and other industry workers in the District would be directly impacted by the proposed Act. DOES would be responsible for educating these impacted employers and workers on their rights under the Act, and the remedies available to them. Due to the number of District employees likely to be impacted, the enhanced compliance monitoring in the Act, and the regulatory guidance that would need to be issued, DOES estimates that implementation of this law would require, at a *minimum*, \$2,235,544 as broken down below:

- \$150,000 to provide the public education to both employers and potentially impacted employees;
- \$534,652 to support the hiring of one full time program manager at a grade 14, step 7, for four years to oversee the administration of the new program;
- \$1,011,832 to support the hiring of two full time compliance investigators at a grade 14, step 5, for four years;
- \$489,060 to support the hiring of a full-time attorney at a grade 14, step 2, for four years to work on compliance enforcement; and
- \$50,000 per year to defray the costs of the work of the Office of Administrative Hearings' Administrative Law Judges to hear any cases related to the new Act.

These estimates are conservative and may need to be expanded if, during implementation, DOES determines that the law is impacting a larger number of District employees and employers.

Chairperson Silverman and councilmembers, thank you for the opportunity to submit testimony for the record on Bill 23-494, the “Ban on Non-Compete Agreements Amendment Act of 2019.”