
Councilmember Elissa Silverman

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 include employees to wear personal protective equipment in the workplace and to provide employees with personal protective equipment, to permit employers to require that employees inform their employer 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 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, 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:

(1) “Adverse employment action” means an action that an employer takes against an employee, including a threat, verbal warning, written warning, reduction of work hours,

40 suspension, termination, discharge, demotion, harassment, material change in the terms or
41 conditions of the employee's employment, and any action that is reasonably likely to deter the
42 employee from attempting to secure any right or protection contained in this title or to prevent or
43 stop a violation of this title.

44 (2) "Active COVID-19 infection" means an infection confirmed by a diagnostic
45 test for COVID-19 and not an antibody test.

46 (3) "COVID-19" means the disease caused by the novel coronavirus SARS-CoV-2.

47 (4) "Employee" shall include any person suffered or permitted to work by an
48 employer.

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

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

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

61 (8) "Hand sanitizer" means alcohol-based hand sanitizer that is at least 60%
62 alcohol.

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

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

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

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

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

73 **Sec. 102. Employer policies and workplace protections.**

74 (a) Beginning 7 days after the effective date of this title and during the public health
75 emergency, employers in the District shall adopt and implement social distancing and worker
76 protection policies, to prevent transmission of COVID-19 in the workplace. For employees that
77 are present in the workplace, employers shall:

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

81 (2)(A)(i) Provide to each employee, unless the employee voluntarily supplies and
82 wears a self-supplied face covering:

83 (I) At least two washable cloth face masks at least every 3
84 months; or

85 (II) A new disposable face mask for each day of work; and

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

91 (I) Install a clear barrier of plexiglass or similar material
92 between the employee and the individuals with whom the employee regularly interacts at a
93 distance of less than 6 feet), or

94 (II) Provide the employee with eye protection such as a
95 face shield or safety goggles; and

96 (B) Require, at minimum, employees to wear cloth face coverings or face
97 masks provided pursuant to subparagraph (A) of this paragraph whenever they are or are likely
98 to be fewer than 6 feet from another individual; provided that the exceptions contained in
99 paragraph (5) shall apply.

100 (3) Provide employees access to and permission to regularly use soap and water,
101 when possible, and hand sanitizer;

102 (4) Provide customers access to hand sanitizer; and

103 (5) Require at minimum, customers, contractors, vendors, and other visitors to the
104 workplace to properly wear face coverings. whenever they are or are likely to be fewer than 6
105 feet from another individual, provided that the following persons are not required to wear face
106 coverings:

107 (i) A child under the age of two years old;

108 (ii) A person who has a cardiovascular or respiratory illness and is
109 experiencing difficulty breathing;

110 (iii) A person who is unconscious, incapacitated, or otherwise
111 unable to take off the face covering without assistance;

112 (iv) A person who is eating or drinking;

113 (v) A person who is participating in vigorous exercise at an
114 outdoor facility or a portion of an indoor facility that is outside and is at least six feet apart from
115 other persons; or

116 (vi) A person who is participating in vigorous exercise inside of a
117 facility that is at least ten feet apart from other persons.

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

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

123 **Sec. 103. Retaliation prohibited.**

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

127 (b)(1) No employer or agent thereof may take an adverse employment action against an
128 employee because the employee tested positive for COVID-19, provided the employee did not
129 physically report to the workplace after receiving a positive test result; the employee was
130 exposed to someone with COVID-19 and needs to quarantine' the employee is sick and is

131 waiting for a COVID-19 test result; or the employee is caring for or seeks to provide care for
132 someone who is sick or quarantined.

133 (2) Nothing in this title prohibits an employer from requiring an employee who
134 has tested positive for COVID-19 to refrain from entering the workplace until a medical
135 professional has cleared the employee to return to the workplace or until a period of quarantine
136 recommended by the Department of Health or CDC has elapsed.

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

140 **Sec. 104. Enforcement.**

141 (a) The Mayor and the Attorney General may enforce and administer this title by
142 conducting investigations (of their volition or after receiving a complaint), holding hearings, and
143 instituting actions for penalties, as may be appropriate. The Mayor and the Attorney General
144 shall have the power to administer oaths and examine witnesses under oath, issue subpoenas,
145 compel the attendance of witnesses, and the production of papers, books, accounts, records,
146 payrolls, documents, and testimony and to take depositions and affidavits in any proceedings
147 before them.

148 (b) The Mayor may assess administrative penalties in the following amounts:

149 (A) For violations of section 102, up to \$50 per violation per employee per
150 day for a willful violation.

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

152 (c)(1) The Attorney General, acting in the public interest, including the need to deter
153 future violations, may enforce this title by commencing a civil action in the name of the District

154 of Columbia in a court of competent jurisdiction on behalf of the District or one or more
155 aggrieved employees.

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

158 (A) Reasonable attorneys' fees and costs;

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

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

162 (D) Equitable relief as may be appropriate.

163 **Sec. 105. Preemption.**

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

166 (b) To the extent a Mayor's Order related to the wearing of face coverings issued
167 pursuant to Section 5 of the District of Columbia Public Emergency Act of 1980, effective
168 March 5, 1981 (D.C. Law 3-149, D.C. Official Code §7-2304) requires employers, employees, or
169 other individuals to adhere to stricter safety standards policy and protocols than those required
170 under section 102, the Mayor's Order shall govern.

171 **TITLE II. PERSONAL PROTECTIVE EQUIPMENT GRANT PROGRAM**

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

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

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

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

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

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

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

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

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

191 “(2) A grant issued pursuant to this section may be provided in an amount up to
192 \$1,000 per eligible small business for the purchase of or reimbursement for purchases of PPE
193 made on or after the enacted date of the Protecting Businesses and Workers from COVID-19
194 Emergency Amendment Act of 2020, enacted on July 28, 2020 (D.C. Act 23-___: 67 DCR ___).

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

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

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

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

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

207 “(2) “PPE” means personal protective equipment, including face masks,
208 disposable gloves, face shields, and plexiglass barriers.”.

209 TITLE III. FISCAL IMPACT AND EFFECTIVE DATE

210 Sec. 301 Applicability

211 Title II shall apply beginning October 1, 2020.

212 Sec. 2. Fiscal impact statement.

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

216 Sec. 302. Effective date.

217 This act shall take effect following approval by the Mayor (or in the event of veto by the
218 Mayor, action by the Council to override the veto), and shall remain in effect for no longer than
219 90 days, as provided for emergency acts of the Council of the District of Columbia in section

220 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;

221 D.C. Official Code § 1-204.12(a)).

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