

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 require employees to 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 that refuses to social distance or wear personal protective equipment, to prohibit retaliation against an employee who tests positive for COVID-19, and to prohibit retaliation against and 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 permit the Mayor and Attorney General to administer and enforce workplace and employee protections, including by conducting investigations, assessing civil fines, and, in the case of the Attorney General, bringing 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) “Active COVID-19 infection” means an infection confirmed by a diagnostic test for COVID-19 and not an antibody test.

40 (2) “COVID-19” means the disease caused by the novel coronavirus SARS-CoV-2.

41 (3) “DOES” means the Department of Employment Services.

42 (4) “Employee” shall include any person suffered or permitted to work by an
43 employer.

44 (5) “Employer” includes every individual, partnership, firm, general contractor,
45 subcontractor, association, corporation, the legal representative of a deceased individual, or the
46 receiver, trustee, or successor of an individual, firm, partnership, general contractor,
47 subcontractor, association, or corporation, employing any person in the District of Columbia.
48 The term “employer” shall include a District government or quasi-governmental agency. The
49 term “employer” shall not include the United States government or its agencies.

50 (6) “Face covering” means a face shield, face mask, or similar impermeable or
51 textile barrier that covers an individual’s nose and mouth and works to reduce the spray of
52 respiratory droplets.

53 (7) “Hand sanitizer” means alcohol-based hand sanitizer that is at least 60%
54 alcohol.

55 (8) “Personal protective equipment” includes face masks, disposable gloves, face
56 shields, disposable gowns or aprons, and plexiglass barriers.

57 (9) “PPE” means personal protective equipment.

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

61 (11) “Retaliation” means an adverse employment action that an employer takes
62 against an employee, including a threat, verbal warning, written warning, reduction of work

63 hours, suspension, termination, discharge, demotion, harassment, or other material employment-
64 related action that is likely to deter the employee from exercising or attempting to exercise a
65 right under this title.

66 (12) “Wear” means to cover both nose and mouth.

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

70 Sec. 102. Employer policies and workplace protections.

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

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

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

80 (I) A new disposable face mask for each day of work; or

81 (II) At least two washable cloth face masks; and

82 (ii) In addition to the face masks provided pursuant to sub-

83 subparagraph (i) of this sub-paragraph, for each employee whose regular job duties make it

84 likely that the employee will be unable to maintain a distance of at least 6 feet from another

85 individual while performing such duties and the employee is required to remain at a stationary
86 post:

87 (I) Provide the employee with a clear plastic face shield; or

88 (II) Install a clear barrier of plexiglass or similar material

89 between the employee and the individuals with whom the employee regularly interacts at a
90 distance of less than 6 feet; and

91 (B) Require employees to wear the face coverings provided pursuant to
92 subparagraph (A) of this paragraph whenever they are or are likely to be fewer than 6 feet from
93 another individual; provided, that an employee need not wear a face mask at the same time as
94 wearing a face shield unless required by the employer's policy;

95 (3) Provide employees access to and permission to regularly use soap and water
96 and hand sanitizer;

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

98 (5) Require customers, contractors, vendors, and other visitors to the workplace to
99 wear face coverings; provided, that customers actively engaged in eating or drinking at a
100 restaurant or exercising 10 feet or more from others at a gym may remove their face coverings
101 during that time.

102 (b) An employee shall inform the employee's employer of a positive test for an active
103 COVID-19 infection in writing or by phone call to a designated individual within 24 hours of
104 receiving results.

105 Sec. 103. Prohibited acts.

106 (a) No employer or agent thereof may retaliate against an employee for the employee's
107 refusal to serve a customer or client, or to work within 6 feet of an individual, who is not

108 complying with the workplace protections in section 102.

109 (b)(1) No employer or agent thereof may retaliate against an employee because the
110 employee tested positive for COVID-19.

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

115 (c) No employer or agent thereof may retaliate against an employee because of actions
116 the employee takes to secure any right or protection contained in this title or to prevent or stop a
117 violation of this title.

118 Sec. 104. Enforcement.

119 (a) The Mayor and the Attorney General may enforce and administer this title by
120 conducting investigations (of their volition or after receiving a complaint), holding hearings, and
121 instituting actions for penalties. The Mayor and the Attorney General shall have the power to
122 administer oaths and examine witnesses under oath; issue subpoenas; compel the attendance of
123 witnesses, and the production of papers, books, accounts, records, payrolls, documents, and
124 testimony; and to take depositions and affidavits in any proceedings before them.

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

126 (1) For violations of section 102, up to \$50 per violation per employee per day for
127 a repeated or willful violation.

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

129 (c)(1) The Attorney General, acting in the public interest, including the need to deter
130 future violations, may enforce the requirements and prohibitions of this title by commencing a

131 civil action in the name of the District of Columbia in a court of competent jurisdiction on behalf
132 of the District or one or more aggrieved employees.

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

135 (A) Reasonable attorneys' fees and costs;

136 (B) Statutory penalties equal to administrative penalties provided under
137 subsection (b) of this section; and

138 (C) On behalf of an aggrieved employee:

139 (i) The payment of lost wages; and

140 (iii) Equitable relief as may be appropriate.

141 Sec. 105. Preemption.

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

144 TITLE II. PERSONAL PROTECTIVE EQUIPMENT GRANT PROGRAM

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

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

150 "Sec. 2317. Personal Protective Equipment emergency grant program."

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

152 "Sec. 2317. Personal protective equipment grant program.

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

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

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

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

164 “(2) A grant issued pursuant to this section may be provided in an amount up to
165 \$500 per eligible small business for the purchase of or reimbursement for purchases of PPE
166 made on or after the enacted date of the Protecting Businesses and Workers from COVID-19
167 Emergency Amendment Act of 2020, enacted on July 28, 2020 (D.C. Act 23-___; 67 DCR ___).

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

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

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

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

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

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

182 TITLE III. FISCAL IMPACT AND EFFECTIVE DATE

183 Sec. 301. Fiscal impact statement.

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

187 Sec. 302. Effective date.

188 This act shall take effect following approval by the Mayor (or in the event of veto by the
189 Mayor, action by the Council to override the veto), and shall remain in effect for no longer than
190 90 days, as provided for emergency acts of the Council of the District of Columbia in section
191 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;
192 D.C. Official Code § 1-204.12(a)).

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