

OFFICE OF
MARY M. CHEH

Councilmember, Ward 3 | Chair, Committee on Transportation & the Environment

MEMORANDUM

TO: Chairman Phil Mendelson
FROM: Councilmember Mary M. Cheh
DATE: June 2, 2022
SUBJECT: Requests for the June 7, 2022 Legislative Meeting



I request that the following emergency measures be agendized for the Legislative Meeting:

- Parity in Workers' Compensation Recovery Emergency Declaration Resolution of 2022
- Parity in Workers' Compensation Recovery Emergency Amendment Act of 2022
- Parity in Workers' Compensation Recovery Temporary Amendment Act of 2022

Currently, under District law, a worker cannot receive any workers' compensation "and at any time receive compensation under the workers' compensation law of any other state for the same injury or death." In practice, this provision is strictly interpreted by the courts to bar injured workers from bringing otherwise valid claims in the District if they have received any compensation under the law of another state, no matter whether the compensation provided in that other state was less than the worker would be entitled to in the District or whether the worker knew that receiving the compensation would waive her right to bring a claim in the District.

This legislative scheme effectively allows employers and their insurers to choose which state's law will apply to workers' compensation claims brought against them. For example, where an employer or its insurance company files the first report of injury in another state and writes the injured employee a check for any amount, that action effectively bars the employee from seeking compensation in the District. An employer may even simply tell the worker that a payment is being made in accordance with the law of another state. This is a problem because workers' compensation laws in the District are generally more favorable to injured workers than those in neighboring Maryland and Virginia. Most notably, the District allows injured workers to "stack" their wages for purposes of calculating benefits, meaning that an injured worker who works more than one job is entitled to benefits based on lost wages from both jobs. In Maryland and Virginia, injured workers generally cannot stack their wages.

Since the workers' compensation laws in neighboring states are more favorable to employers and many injured workers have an urgent need to expeditiously access compensation after an injury, local workers' compensation attorneys in the District have seen a number of employers and their insurance companies use these tactics to prevent workers from bringing their valid claim for workers' compensation in the District. This bill remedies this problem by removing the bar on recovering workers' compensation in the District after receiving similar compensation under the laws of another state. This bill does not allow a worker to receive compensation twice for the same injury. Rather, it requires the court to reduce damages by the amount of compensation already paid in the other state. In essence, the bill allows an injured worker to recover the difference in compensation between that provided in the other state and the amount available under District law.

- Urban Forest Preservation Stop Work Order Authority Congressional Review Emergency Declaration Resolution of 2022
- Urban Forest Preservation Stop Work Order Authority Congressional Review Emergency Amendment Act of 2022

On March 1, 2022, the Council passed the Urban Forest Preservation Stop Work Order Authority Emergency Amendment Act of 2022, which expires on June 26, 2022. On April 5, 2022, the Council passed the Urban Forest Preservation Stop Work Order Authority Temporary Amendment Act of 2022, which is undergoing congressional review. This emergency legislation is necessary to prevent a gap in the law between the expiration of the emergency act and the effective date of the temporary act.

This emergency legislation provides the Mayor with the immediate authority to issue a stop work order when our tree protection laws are in imminent danger of being violated. The Council will separately consider permanent legislation—B24-444, the Urban Forest Preservation Authority Amendment Act of 2022—on second reading at the Legislative Meeting.

I also request, on behalf of the mayor, that the following emergency contract measures be agendaized for the Legislative Meeting:

- Modification Nos. 9 and 10 to Contract No. DCKA-2017-C-0047 with First Choice Masonry Inc. Approval and Payment Authorization Emergency Declaration Resolution of 2022
- Modification Nos. 9 and 10 to Contract No. DCKA-2017-C-0047 with First Choice Masonry Inc. Approval and Payment Authorization Emergency Act of 2022

Pursuant to Contract No. DCKA-2017-C-0047, now in option year three, the contractor is to provide construction services for the installation of bicycle and pedestrian facilities; the installation of ten miles of bicycle lanes; various types of pavement markings, including such as crosswalks, words or symbols, lane lines, and other paint; and eradicate existing pavement markings. Under the contract, the fabrication and installation of supporting signs in an on-call capacity may be required of the contractor.

Modification No. 9 exercised a partial option year for the contract from February 28, 2022 through May 27, 2022 in the not-to-exceed amount of \$999,000, which did not trigger Council review. Proposed Modification No. 10 would exercise remainder of the option year three from the date of award through February 27, 2023 in the not-to-exceed amount of \$1,451,000, triggering our review.

Draft copies of the emergency legislation are attached. Please contact Michael Porcello in my office at 724-8062 or mporcello@dccouncil.us if you have any questions.