

8 A BILL
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11 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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17 To require a services contract when a hiring entity employs a domestic worker as their employee
18 or engages a domestic worker who is an independent contractor, to specify what
19 information must be provided and may not be included in the services contract, to specify
20 when translations and modifications of the services contract are required, to require
21 referral agencies to provide information to hiring entities and domestic workers, to
22 require the Mayor to create services contract templates, to require the Mayor to post
23 certain information online for the benefit of hiring entities and domestic workers, to
24 require the Attorney General to issue grants to community based organizations to develop
25 certain educational materials for domestic workers and hiring entities, including safety
26 and health information, to specify the powers of the Mayor and Attorney General to
27 enforce Title I, to specify the procedures for filing administrative and civil complaints for
28 violations of Title I; to amend the District of Columbia Human Rights Act of 1977 to
29 eliminate the exclusion of domestic servants from its protections, and to clarify the
30 application of other provisions to domestic work arrangements; to amend the Office of
31 Human Rights Establishment Act of 1999 to direct the Office of Human Rights to prepare
32 guidance materials regarding the application of the Human Rights Act of 1977 to
33 domestic work arrangements; and to amend the D.C. Occupational Safety and Health Act
34 of 1988 to eliminate the exclusion of domestic servants from the definition of an
35 employee.
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37 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
38 act may be cited as the “Domestic Worker Employment Rights Amendment Act of 2022”.

39 TITLE I. DOMESTIC WORKER CONTRACTS

40 Sec. 101. Definitions.

41 For the purposes of this title, the term:

(1) “Casual basis” means occurring at irregular, uncertain, or incidental times and differing in nature from the type of paid work in which the worker is customarily engaged.

(2) “Domestic services” means the following work when performed in or around a private residence:

(A) Child care, except work performed by the employee of a child development facility, as defined in section 2(3) of the Child Development Facilities Regulation Act of 1997, effective April 13, 1999 (D.C. Law 12-215, D.C. Official Code § 7-2031(3));

(B) Aiding an elderly person or a person with a disability in activities of daily living;

(C) Organizing, managing, or cleaning the home or its contents, including laundering clothes and washing dishes;

(D) Cooking, preparing, or serving food; or

(E) Services such as gardening, driving, or shopping when they are incidental to the services described in subparagraphs (A) through (D) of this paragraph.

(3) “Domestic services agency” means a hiring entity that employs 2 or more domestic workers and dispatches them to the private residences of customers.

(4) “Domestic worker” means an individual who performs domestic services for compensation in or around the private residence of another, but does not include:

(A) An individual who is a family member of the hiring entity for whom the individual performs domestic services;

(B) An individual who primarily performs household repairs or construction such as plumbing, masonry, painting, renovating, or similar construction work;

(C) An individual whose primary responsibilities are caring for, boarding, or walking dogs, cats, or other household pets; or

(D) An individual employed or engaged on a casual basis.

(5) “Engage” means to pay an independent contractor a fee for services.

(6) “Hiring entity”:

(A) Means an individual, partnership, association, corporation, business trust, or other entity, person, or group that employs or seeks to employ or engages or seeks to engage an individual to perform domestic services in the District for 5 or more hours in a calendar month; and

(B) Does not mean:

(i) The customer of a domestic services agency; or

(ii) An agency, branch, or instrumentality of a state, the District, or the United States government.

(7) “Live-in domestic worker” means a domestic worker whose employer provides the domestic worker with lodging in the residence where domestic work is performed.

(8) “Referral agency” means an individual, partnership, association, corporation, business trust, or any entity, person, or group, other than a hiring entity, that, as a primary function of its business, connects prospective or current hiring entities and domestic workers to facilitate domestic services.

(9) “Services contract” means a written agreement between one or more hiring entities and one or more domestic workers.

(10) “Shared services” means domestic services that a single domestic worker performs, often simultaneously, for the mutual benefit of 2 or more hiring entities on a regular

87 schedule, such as when 2 families employ a single caregiver to provide shared childcare for the
88 families' children during the traditional work week.

89 (11) "Wage Payment Act" means An Act To provide for the payment and
90 collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 976; D.C.
91 Official Code § 32-1301 *et seq.*).

92 Sec. 102. Services contracts and other requirements for hiring entities and referral
93 agencies.

94 (a) A hiring entity shall execute a services contract with a domestic worker no later than
95 the first day a domestic worker is expected to perform work for a hiring entity, or, if the hiring
96 entity employs or engages a domestic worker as of the applicability date of this section, within
97 30 calendar days after the applicability date of this section.

98 (b)(1) An executed services contract shall include the following:

- 99 (A) The domestic worker's start date;
- 100 (B) If known, end date of contract;
- 101 (C) Address where work will usually be performed or the business address
102 that the hiring entity registered with the Department of Licensing and Consumer Protection;
- 103 (D) The primary contact information for the hiring entity, including
104 telephone number;
- 105 (E) The duties to be performed by the domestic worker;
- 106 (F) The rate of pay per hour, week, or other unit of time, specifying for
107 domestic workers who are employees the rate per hour and overtime rate;
- 108 (G) The form, place, and frequency of payment;
- 109 (H) The date first payment will be provided;

(I) The weekly schedule including days of the week, start time, end time, and number of hours of work per week;

(J) If the domestic worker will be provided with rest breaks or meal breaks, the customary practice or time;

(K) Types of leave from work provided and whether paid or unpaid;

(L) Any other compensation or reimbursement provided by the hiring entity, such as health insurance premiums, transportation allowance, or separation pay;

(M) Whether the domestic worker must provide their own vehicle for the fulfillment of work duties; and

(N) For live-in domestic workers, a description of the type and value of lodging provided, time of sleeping period, and personal time allotment.

(2) If any of the provisions required pursuant to paragraph (1) of this subsection do not apply to the relationship between a hiring entity and domestic worker, the hiring entity shall specify in the services contract the provisions that do not apply.

(3) A hiring entity and domestic worker may execute a services contract in identical documents which shall have the same force and effect as a single document bearing the signatures of all parties.

(4) When one or more of the terms of a services contract permanently changes, the parties shall modify the existing services contract or execute a new services contract.

(5) Recipients of shared services shall jointly execute a services contract with the domestic worker that complies with this subsection.

(c)(1) A services contract shall not:

(A) Require the domestic worker to waive any provision of this title;

(B) Prohibit, punish, interfere with, or have the effect of deterring the domestic worker from filing a complaint or cooperating with an investigation under this title; or

(C) Contain a non-compete provision to the extent prohibited in the Ban on Non-Compete Agreements Amendment Act of 2020, effective Mar 16, 2021 (D.C. Law 23-209; D.C. Official Code § 32-581.01 *et seq.*).

(2) A provision in an executed services contract that paragraph (1) of this subsection prohibits shall be void as a matter of law.

(d)(1) A hiring entity shall:

(A) Make reasonable efforts to provide a domestic worker with a translation of a services contract in the domestic worker's preferred language; and

(B) Retain a true and accurate copy of an executed services contract with a domestic worker and other records made or kept in relation to this title pursuant to rules promulgated pursuant to section 105 for no less than 3 years and as long as may be required by other applicable District law.

(2) In determining whether a hiring entity made reasonable efforts to provide the translated services contract pursuant to paragraph (1)(A) of this subsection, a factfinder shall consider whether the Mayor has made template agreements available in the domestic worker's preferred language, the other resources available to the hiring entity to obtain a translation, the time the hiring entity spent attempting to obtain translation services, the complexity of the information in need of translation, and other relevant factors.

(e) A hiring entity may not discharge, threaten, penalize, or in any other manner retaliate against a domestic worker because the hiring entity believes or because the domestic worker in fact:

(1) Alleged a violation of this title that the domestic worker reasonably believes to:

- (A) A hiring entity;
- (B) The Mayor;
- (C) The Attorney General; or
- (D) Another person that the hiring entity has employed or engaged.

(2) Participated in or cooperated with an action by the Mayor or Attorney General under this title; or

(3) Otherwise exercised a right pursuant to this title.

(f) A referral agency shall notify domestic workers and hiring entities about the requirements of this section whenever the referral agency provides services to a hiring entity or a domestic worker.

(g) Hiring entities that receive services under the same services contract are jointly and severally liable for violations of this section.

(h) Unless otherwise specified in an executed services contract, no provision of the contract may be interpreted to limit or prohibit either party from terminating the employment or engagement at-will.

(i) A services contract that complies with this section shall be deemed to satisfy an employer's obligations pursuant to the requirements of section 9(c) of the Minimum Wage Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1008(c)).

(j) Nothing in this subsection shall be construed to mean that a hiring entity or a domestic worker may not include other lawful terms in a services contract.

Sec. 103. Outreach and public guidance.

(a)(1) The Mayor shall create template services contracts that hiring entities may use to comply with the requirements of section 102. The Mayor shall publish the templates as specified in subsection (c) of this section in English, Spanish, and at least 5 other languages that are the most commonly spoken languages in the District.

(2) The Mayor shall make the template services contracts electronically available within 90 days after the applicability date of this section. A member of the public should be able to download, enter information electronically, print, and save the templates using a desktop computer, tablet, or smartphone.

(b) No later than 180 calendar days after the applicability date of this section, the Office of the Attorney General shall award grants, pursuant to the requirements set forth in the Grant Administration Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code § 1-328.11 *et seq.*), to provide guidance to domestic workers and hiring entities about domestic workers' rights under this title. A grantee shall be a community-based organization with at least 2 years' experience working on behalf of domestic workers. Grantees shall use grants awarded under this subsection to do any combination of the following:

(1) Based on the input of an expert or experts in the field of health and safety, develop guidance for domestic workers and hiring entities to address the most common hazards domestic workers encounter in their workplaces and how to mitigate them; or

(2) Conduct education and outreach to domestic workers, hiring entities, and the public about the rights of domestic workers.

(c)(1) No later than 90 calendar days after the applicability date of this section, the Mayor shall publish a website that provides information in a plain, easy-to-read format for use by

domestic workers, hiring entities, and the general public. The information provided on the website shall include:

(A) The template services contracts created pursuant to subsection (a) of this section;

(B) Instructions for how to use the templates;

(C) Answers to commonly asked questions about this title's requirements, which the Mayor shall create in consultation with domestic workers and hiring entities;

(D) Information about the rights of domestic workers under:

(i) The Human Rights Act of 1977, effective December 13, 1977 (D.C. Official Code § 2-1401.01 *et seq.*);

(ii) The Minimum Wage Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1002 *et seq.*);

(iii) The Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-531.01 *et seq.*);

(iv) The Universal Paid Leave Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-264, D.C. Official Code § 32-541.01 *et seq.*);

(v) The Protecting Pregnant Workers Fairness Act of 2014, effective March 3, 2015 (D.C. Law 20-168, D.C. Official Code § 32-1231.01 *et seq.*);

(vi) The Wage Payment Act;

(vii) The District of Columbia Workers' Compensation Act of 1979, effective July 1, 1980 (D.C. Law 3-77, D.C. Official Code § 32-1501 *et seq.*); and

(viii) The District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 946; D.C. Official Code § 51-101 *et seq.*);

(E) Instructions about how to file a complaint and how to respond to a complaint under this title;

(F) Links to resources provided by the United States Department of Labor regarding the rights of domestic workers;

(G) A list of resources detailing the federal and District obligations of hiring entities , including IRS Publication 926, Household Employer's Tax Guide or revisions or successor publications thereof; and

(H) When made available by the Office of the Attorney General, the safety guidance created pursuant to subsection (b)(2) of this section.

(2) The website shall provide the information required under paragraph (1) of this subsection in English, Spanish, and at least 5 other languages that are the most commonly spoken languages in the District.

Section 104. Enforcement.

(a) A hiring entity or referral agency determined to have violated one or more requirements of section 102 shall be liable for penalties and relief as specified in this section.

(b)(1) The Mayor and Attorney General shall administer and enforce this title consistent with their respective powers and rights under section 6(a), (a-1), (b), and (c) of the Wage Payment Act.

(2)(A) Any records a hiring entity or referral agency maintains pursuant to the requirements of this title or regulations issued to implement this title shall be open to and made available for inspection or transcription by the Mayor, the Mayor's authorized representative, or the Office of the Attorney General upon demand at any reasonable time. A hiring entity or

referral agency shall furnish to the Mayor, the Mayor's authorized representative, or the Office of the Attorney General on demand a sworn statement of records and information on forms prescribed or approved by the Mayor or Attorney General.

(B) No individual may be found to be in violation of subparagraph (A) of this paragraph unless the individual had an opportunity to challenge the Mayor or Attorney General's demand before a judge, including an administrative law judge.

(3) Except as provided for in rules promulgated under this title, the Mayor or Attorney General shall not require a domestic worker to disclose the domestic worker's immigration status in order to enforce this title.

(c)(1) The Mayor may assess an administrative penalty of no less than \$250 for each violation of section 102(a) through (d), and (f) and an administrative penalty of no less than \$500 for each violation of section 102(e).

(2) The Mayor may not collect an administrative penalty under this subsection unless the Mayor has provided the hiring entity or referral agency alleged to have violated section 102 with notification of the violation, notification of the amount of the administrative penalty to be imposed, and an opportunity to request a formal hearing held pursuant to the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), and section 8a(e) of the Wage Payment Act.

(d)(1) A domestic worker aggrieved by a hiring entity's violation of section 102(a) through (e) may pursue relief by filing:

(A) An administrative complaint with the Mayor setting forth facts minimally sufficient to allege a violation of this title; or

(B) A civil action against the hiring entity in a court of competent jurisdiction. In such action, a plaintiff shall carry the burden of proof by a preponderance of evidence.

(2)(A) The procedures set forth in section 8a of the Wage Payment Act, except for subsection (e)(4) and (5), shall govern the conciliation, resolution, and enforcement of an administrative complaint that a domestic worker files pursuant to paragraph (1)(A) of this subsection.

(B) At any time before making a final determination of whether a violation of section 102 has occurred, the Mayor may:

(i) Provide a hiring entity alleged to have failed to comply with one or more of the requirements of section 102 with 15 calendar days to cure defects in the form or terms of the services contract if curing such defects would resolve the violation of section 102; or

(ii) With the consent of the complainant, suspend investigation of the complaint while attempting to mediate the dispute.

(3) Section 8 of the Wage Payment Act shall apply to any civil action that a domestic worker files pursuant to paragraph (1)(B) of this subsection.

(e) Upon investigation by the Mayor pursuant to subsection (b) of this section or in an action to enforce this title pursuant to subsection (d) of this section, in addition to administrative penalties authorized pursuant to subsection (c) of this section, a hiring entity found to have violated:

(1) Any requirement of section 102(a) through (d) shall be liable for relief payable to each domestic worker subject to each violation in an amount not less than \$250; and

(2) Section 102(e) shall be liable for relief payable to each domestic worker subject to retaliation in an amount not less than \$500 for each instance of retaliation.

(f) Appeals of any administrative order issued under this section shall be made to the District of Columbia Court of Appeals as provided in section 110 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-510).

(g) The rights, remedies, and prohibitions accorded by the provisions of this title are in addition to and cumulative of any right, remedy, or prohibition accorded by the common law, federal law, or any District statute, and nothing contained herein shall be construed to deny, abrogate, or impair any such common law or statutory right, remedy, or prohibition.

Sec. 105. Rules.

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules necessary to implement the provisions of this title, including:

(1) When the requirement to modify or replace a services contract under section 102(b)(4) shall apply;

(2) Recordkeeping requirements for a hiring entity or a referral agency; and

(3) Procedures for limiting the collection, retention, use, and disclosure of information related to the immigration status of individuals covered by this title.

Sec. 106. Collective bargaining agreements.

Nothing in this act shall be interpreted to supersede the terms of a valid collective bargaining agreement.

TITLE II. HUMAN RIGHTS PROTECTIONS.

Sec. 201. The Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code §§ 2-1401.01 *et seq.*) is amended as follows:

(a) Section 102(10) (D.C. Official Code § 2-1401.02(10)) is amended by striking the phrase “children or domestic servants,” and inserting the phrase “or children,” in its place.

(b) Section 211(c-1)(3)(B) (D.C. Official Code § 2-1402.11(c-1)(3)(B)) is amended as follows:

(1) Sub-subparagraph (iv) is amended by striking the phrase “; or” and inserting a semicolon in its place.

(2) Sub-subparagraph (v) is amended by striking the period and inserting the phrase “; or” in its place.

(3) A new sub-subparagraph (vi) is added to read as follows:

“(vi) If the employee works in a private residence, necessary to protect residents at the employee’s workplace from harm.”.

(c) Section 212 (D.C. Official Code § 2-1402.12) is amended by adding a new subsection (c) to read as follows:

“(c)(1) It shall not be an unlawful discriminatory practice for an employer to use sex as a bona fide occupational qualification when an employer seeks to employ an employee to perform services in a private residence, if:

“(A) The employer has a factual basis for believing that hiring an individual of a particular sex would undermine the privacy interests of the individual receiving services in the private residence;

“(B) The individual receiving services has a privacy interest entitled to protection under the law; and

339 “(C) No reasonable alternative exists to protect the individual’s privacy
340 interest.

341 “(2) Paragraph (1) of this subsection shall not apply to employment decisions
342 based on:

343 “(A)The stereotyped characterization of one group as opposed to another;

344 “(B) Actual or perceived sexual orientation of a prospective employee; or

345 “(C) The prospective employee’s preferred name or personal pronouns.

346 “(3) This subsection shall be construed in a manner consistent with the regulations
347 and jurisprudence interpreting sex as a bona fide occupational qualification under section 703(e)
348 of the Civil Rights Act of 1964, approved July 2, 1964 (78 Stat. 256; 42 U.S. Code § 2000e-
349 2(e)).”.

350 (d) Section 251 (D.C. Official Code § 2-1402.51) is amended as follows:

351 (1) The existing text is redesignated as subsection (a).

352 (2) Newly designated subsection (a) is amended by striking the phrase “Every
353 person” and inserting the phrase “Except as provided in subsection (b) of this section, every
354 person” in its place.

355 (3) A new subsection (b) is added to read as follows:

356 “(b) If an employer is subject to this act because the employer employs an individual to
357 work in a private residence, then, in lieu of posting and keeping posted a notice in the private
358 residence, the employer may provide the employee with a copy of a notice required pursuant to
359 subsection (a) of this section whose language and form has been prepared by the Office, setting
360 forth excerpts or summaries of the pertinent provisions of this act and information pertinent to
361 the filing of a complaint.”.

Sec. 202. Section 204 of the Office of Human Rights Establishment Act of 1999, effective October 20, 1999 (D.C. Law 13-38; D.C. Official Code § 2-1411.03), is amended as follows:

(a) Paragraph (10) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(b) Paragraph (11) is amended by striking the period and inserting the phrase “; and” in its place.

(c) A new paragraph (12) is added to read as follows:

“(12) Develop, maintain, and make available one or more written guidance documents that address common or anticipated forms of discrimination in the employment of individuals to work in an employer’s private residence and that provide guidance to such employers on compliance with the Human Rights Act.”.

TITLE III. OCCUPATIONAL SAFETY AND HEALTH

Sec. 301. Section 2(5) of the D.C. Occupational Safety and Health Act of 1988, effective March 16, 1989 (D.C. Law 7-186; D.C. Official Code § 32-1101(5)), is amended by striking the phrase “obligation, but does not include domestic servants.” and inserting the phrase “obligation.” in its place.

TITLE IV. FISCAL IMPACT, APPLICABILITY, AND EFFECTIVE DATE.

Sec. 401. Applicability.

(a)(1) Sections 101, 103, and 105, and Title II shall apply upon the date of the inclusion of their fiscal effect in an approved budget and financial plan.

(2) Sections 102, 104, and 106 shall apply 120 calendar days after the date of inclusion of their fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect of Titles I and II in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 402. Fiscal impact statement.

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

Sec. 403. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.