


Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: November 19, 2020

SUBJECT: Fiscal Impact Statement – Ban on Non-Compete Agreements
Amendment Act of 2020

REFERENCE: Bill 23-494, Draft Committee Print provided to the Office of Revenue
Analysis on November 5, 2020

Conclusion

Funds are not sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill. The bill will cost approximately \$207,000 in fiscal year 2021 and \$730,000 over the four-year financial plan.

Background

The bill prohibits employers from requiring employees to enter into any “non-compete agreement,” defined as an agreement restricting the employee’s ability to hold another job or provide services to another entity either simultaneously or subsequent to employment, or to prohibit the employee from having his or her own business. Any such agreements entered into after the bill’s applicability date would be void and unenforceable in court. No workplace policies may include non-compete agreements. Employers must inform employees of the ban on non-compete agreements within 90 days of the bill’s applicability data, and, subsequently for new hires, within seven days of hire.

The Mayor and the Office of the Attorney General (OAG) may enforce the provisions of the bill and may require employers to submit records showing compliance with the bill. Employees who are asked to sign a non-compete agreement or suffer retaliation from an employer for activities addressed by prohibited non-compete agreements may file a complaint with the Mayor or take action in civil court. Employers have the right to appeal any violations determined by the Mayor to the Office

The Honorable Phil Mendelson

FIS: "Ban on Non-Compete Agreements Amendment Act of 2020," Bill 23-494, Draft Committee Print provided to the Office of Revenue Analysis on November 5, 2020

of Administrative Hearings (OAH). The Mayor may assess administrative penalties of \$350 to \$1,000 for each violation (including not less than \$1,000 for retaliation against employees) and such fees are to be deposited in the Wage Theft Prevention Fund¹. Additionally, employees may receive \$500 to \$1,000 from employers (but up to \$1,500 if the employer requested a prohibited non-compete agreement) for each initial violation and not less than \$3,000 per employee for subsequent violations. When an employer is found to have retaliated against an employee, it must pay relief of \$1,000 to \$2,500 for an initial violation and \$3,000 for each subsequent violation.

Financial Plan Impact

Funds are not sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill. The bill costs \$207,000 in fiscal year 2021 and a total of \$730,000 over the four-year financial plan.

The Department of Employment Services' (DOES) Office of Wage Hour Compliance will be responsible for writing rules to implement the bill, promoting the bill's protections to employees, and investigating complaints received about employers violating the non-compete ban. DOES will require \$100,000 over two years to implement a public education campaign informing employees of the new legal protections. DOES will also require a new program manager to oversee the administration of compliance with the new ban as well as associated equipment and non-personal services costs. DOES will require \$10,000 annually to expand its memorandum of understanding for OAH's work if employers request a hearing on any violations found by DOES.

OAG does not require any new resources under the bill. If OAG decides to pursue any cases of violations of the ban it can do so with existing resources.

Ban on Non-compete Agreements Amendment Act of 2020					
Bill 23-494					
Implementation Costs for DOES					
Fiscal Year 2021 - Fiscal Year 2024					
(\$ thousands)					
	FY 2021	FY 2022	FY 2023	FY 2024	Total
Public education campaign	\$50	\$50	\$0	\$0	\$100
Salary and fringe, Program Manager	\$144	\$144	\$145	\$145	\$578
MOU with OAH	\$10	\$10	\$10	\$10	\$40
Equipment and other NPS	\$3	\$3	\$3	\$3	\$12
Total Costs	\$207	\$207	\$158	\$158	\$730

¹ D.C. Official Code § 32-1307.01.