

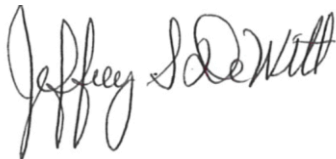
Government of the District of Columbia
Office of the Chief Financial Officer



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: December 1, 2020

SUBJECT: Fiscal Impact Statement – Displaced Workers Right to Reemployment
and Retention Amendment Act of 2020

REFERENCE: Bill 23-965, Draft Committee Print as provided to the Office of Revenue
Analysis on November 29, 2020

Conclusion

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill.

Background

The bill requires¹ employers who have laid off workers from certain covered establishments due to the COVID-19 pandemic², as well as contractors employing certain types of workers, to rehire them once the job is needed again, precluding the employer from hiring other workers for such job prior to hiring the displaced worker. Covered establishments include hotels, restaurants, taverns, events and entertainment venues, and retail stores. Affected workers include those not working in an executive, administrative or professional capacity. The bill's reinstatement protections further apply to contractors who employed workers in food service, janitorial or maintenance services, nonprofessional health care employees working in a hospital or nursing home, and security service personnel (excluding armed special police officers and security officers working in District of

¹ By amending The Displaced Workers Protection Act of 1994, effective April 26, 1994 (D.C. Law 10-105; D.C. Official Code § 32-101 *et seq.*)

² Defined in the bill as employees whose most recent separation from employment occurred on or after December 1, 2019 for hotel employees or March 1, 2020 for all other employees and whose separation was not due to voluntary resignation, termination with good cause or misconduct

The Honorable Phil Mendelson

FIS: Bill 23-965, "Displaced Workers Right to Reemployment and Retention Amendment Act of 2020," Draft Committee Print as provided to the Office of Revenue Analysis on November 29, 2020

Columbia Public Schools or a public charter school). To the extent some but not all jobs held prior to the pandemic become available, the employer must offer all eligible employees a conditional reinstatement offer in writing, and then award interested workers the position based on their pre-pandemic seniority level (except for restaurant and tavern employers who do not need to re-hire based on seniority level). Employers with less than 35 employees as of March 1, 2020 are excluded.

The worker protection applies to successor employers, so that any change in ownership or controlling interest of an entity that occurs after January 31, 2020, which is operating a substantially similar business must re-hire the displaced workers of the prior entity for a minimum of 90 days. At the end of the 90 day transition period, the new entity may make continued employment contingent on a satisfactory performance evaluation. Entities anticipating a change in identity or controlling interest must notify all former employees eligible for the bill's protections (as well as applicable labor organizations) no later than fifteen days before such change shall occur.

Enforcement under the bill is limited to action of the Superior Court of the District of Columbia. The bill specifies the amount of back pay and benefits that may be awarded to the employee, the level of damages in cases of malice or reckless indifference, and that reasonable attorney's fees may be included in the award. The provisions of the bill affect job openings from February 1, 2021 and apply until December 31, 2024.

Financial Plan Impact

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill.

The Department of Employment Services (DOES) does not enforce provisions of the Displaced Workers Protection Act of 1994. To the extent employers do not comply with the provisions of the bill, former employees are limited to remedy only through the Superior Court. DOES will not perform any audits or proactive enforcement of the bill's provisions.