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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 9-248

"Minimum Wage Act Revision Act of 1992"

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 9-343 on first and second readings, December 1, 1992, and December 15, 1992, respectively. Following the signature of the Mayor on January 14, 1993, this legislation was assigned Act No. 9-394, published in the January 29, 1993, edition of the D.C. Register, (Vol. 40 page 761) and transmitted to Congress on January 26, 1993 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 9-248, effective March 25, 1993.



JOHN A. WILSON
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

January 26,27

February 2,3,4,16,17,18,19,22,23,24,25,26

March 1,2,3,4,5,8,9,10,11,12,15,16,17,18,23,24

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 14, 1993

To revise An Act To protect the lives and health and morals of women and minor workers in the District of Columbia, and to establish a minimum Wage Board, and define its powers and duties, and to provide for the fixing of minimum wages for such workers, and for other purposes, to prohibit any further wage orders issued under that act from taking effect, to establish that the minimum wage rate set from time to time by the federal government, plus \$1.00, shall be the only minimum wage applicable in the District of Columbia, and to provide for other employee protections.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Minimum Wage Act Revision Act of 1992".

Sec. 2. Findings and declaration of policy.

(a) The Council of the District of Columbia finds that persons employed in the District of Columbia should be paid at wages sufficient to provide adequate maintenance and to protect health. Any wage that is not sufficient to provide adequate maintenance and to protect health impairs the health, efficiency, and well-being of persons so employed, constitutes unfair competition against other employers and their employees, threatens the stability of industry, reduces the purchasing power of employees, and requires, in many instances, that their wages be supplemented by the payment of public moneys for relief of other public and private assistance. Employment of persons at these insufficient rates of pay threatens the health and well-being of the people of the District of Columbia and injures the overall economy.

New
Section
36-220

(b) It is declared the policy of this act to ensure the elimination of the conditions referred to above.

Sec. 3. Definitions.

For the purposes of this act:

- (1) The term "employ" includes to suffer or permit to work.
- (2) The term "employee" includes any individual employed by an employer, except that this term shall not include:

New
Section
36-220.1

(A) Any individual who, without payment and without expectation of any gain, directly or indirectly, volunteers to engage in the activities of an educational, charitable, religious, or nonprofit organization;

(B) Any lay member elected or appointed to office within the discipline of any religious organization and engaged in religious functions; or

(C) Any individual employed as a casual babysitter, in or about the residence of the employer.

(3) The term "employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States or the District of Columbia.

(4) The term "gratuities" means voluntary monetary contributions received by an employee from a guest, patron, or customer for services rendered.

(5) The term "Mayor" means the Mayor of the District of Columbia or the Mayor's designated agent or representative, including the Department of Employment Services.

(6) The term "occupation" means any occupation, service, trade, business, industry, or branch or group of occupations or industries, or employment or class of employment, in which employees are gainfully employed.

(7) The term "regular rate" means all remuneration for employment paid to, or on behalf of, the employee, but shall not be considered to include the items set forth in the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 207(e)(1), (2), (3), (4), (5), (6), and (7). Extra compensation paid as described in section 207(e)(5), (6), and (7) shall be creditable toward overtime compensation.

(8) The term "wage" means compensation due to an employee by reason of the employee's employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, including allowances as may be permitted by any regulation issued under sections 4 and 7 of this act.

(9) The term "Washington metropolitan region" means the area consisting of the District of Columbia, Montgomery, and Prince George's Counties in Maryland, Arlington and Fairfax Counties and the Cities of Alexandria, Fairfax and Falls Church in Virginia.

(10) The term "working time" means all the time the employee:

(a) Is required to be on the employer's premises, on duty, or at a prescribed place;

(b) Is permitted to work;

(c) Is required to travel in connection with the business of the employer; or

(d) Waits on the employer's premises for work.

Interpretations of what constitutes working time shall be made in accordance with Title 29 of the Code of Federal Regulations, Part 785, Hours Worked Under the Fair Labor Standards Act of 1938, as amended, except that references to interpretations of the Portal-to-Portal Act shall have no force and effect.

Sec. 4. (a) On October 1, 1993 the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be the minimum wage set by the United States government from time to time pursuant to the Fair Labor Standards Act, approved June 25, 1938 (29 U.S.C. § 206 *et seq.*) ("Fair Labor Standards Act"), plus \$1.00.

New
Section
36-220.2

(b) A person shall be employed in the District of Columbia when:
(1) The person regularly spends more than 50% of their working time in the District of Columbia; or

(2) The person's employment is based in the District of Columbia and the person regularly spends a substantial amount of their working time in the District of Columbia and not more than 50% of their working time in any particular state.

(c) No employer shall employ any employee for a workweek that is longer than 40 hours, unless the employee receives compensation for employment in excess of 40 hours at a rate not less than 1 1/2 times the regular rate at which the employee is employed.

(d) All handicapped workers shall be paid at a rate not less than the minimum wage, except in those instances where a certificate has been issued by the United States Department of Labor that authorizes the payment of less to handicapped workers under section 214(c) of the Fair Labor Standards Act.

(e) No employer shall be deemed to have violated subsection (c) of this section if the employee works for a retail or service establishment and:

(1) The regular rate of pay of the employee is in excess of 1 1/2 times the minimum hourly rate applicable to the employee under this act; and

(2) More than 1/2 of the employee's compensation for a representative period (not less than 1 month) represents commissions on goods or services.

(f) In determining the wage of an employee who receives gratuities, the amount paid to the employee by the employer shall be deemed to be increased on account of gratuities by an amount determined by the employer, but not by an amount in excess of 55% of the minimum wage as set by subsection (a) of this section, except that the amount of the increase on account of gratuities determined by the employer shall not exceed the value of gratuities received by the employee.

(g) Subsection (f) of this section shall not apply to an employee who receives gratuities unless:

(1) the employee has been informed by the employer of the provisions of subsection (f) of this section; and

(2) all gratuities received by the employee have been retained by the employee, except that this provision shall not be construed to prohibit the pooling of gratuities among employees who customarily receive gratuities."

Sec. 5. (a) The minimum wage and overtime provisions of section 4 shall not apply with respect to:

(1) Any employee employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman (as these terms are defined by the Secretary of Labor under section 201 *et seq.* of the Fair Labor Standards Act; or

(2) Any employee engaged in the delivery of newspapers to the home of the consumer.

(b) The overtime provisions of section 4(c) shall not apply with respect to:

(1) Any employee employed as a seaman;

(2) Any employee employed by a railroad;

New
Section
36-220.3

(3) Any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trailers, or trucks, if employed by a non-manufacturing establishment primarily engaged in the business of selling these vehicles to ultimate purchasers;

(4) Any employee employed primarily to wash automobiles by an employer whose annual dollar volume of sales is derived by more than 50% from washing automobiles, and for the employee's employment in excess of 160 hours over a period of 4 consecutive workweeks, the employee receives compensation at a rate of 1 1/2 times or more the regular rate at which he is employed;

(5) Any employee employed as an attendant at a parking lot or parking garage; or

(6) Any employee employed by a carrier by air who voluntarily exchanges workdays with another employee for the primary purpose of utilizing air travel benefits available to these employees.

Sec. 6. The Mayor or his authorized representative shall have the authority to:

(1) Investigate and ascertain the wages of persons employed in any occupation in the District of Columbia;

(2) Enter and inspect the place of business or employment of any employer in the District of Columbia in order to:

(A) Examine and inspect any books, registers, payrolls, and other records as the Mayor or the Mayor's authorized representative may deem necessary or appropriate;

(B) Copy books, registers, payrolls, and other records as the Mayor or the Mayor's authorized representative may deem necessary or appropriate; and

(C) Question an employee for the purpose of ascertaining whether the provisions of this act and the orders and regulations issued thereunder have been and are being complied with; and

(3) Require from any employer full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, and any other information that pertains to the employment of the employees as the Mayor or the Mayor's authorized representative may deem necessary or appropriate to carry out the purposes of this act.

Sec. 7. (a) The Mayor shall make and revise regulations, including definitions of terms, as deemed appropriate to carry out the purposes of this act or necessary to prevent its circumvention or evasion and to safeguard the minimum wage rates and the overtime provisions established by this act.

(b) The Mayor shall make regulations in order to:

(1) Provide reasonable allowances for board, lodging, or services customarily furnished by employers to employees; and

(2) Provide allowances for other special conditions or circumstance that may be usual in a particular employer-employee relationship.

(c) The Mayor may make regulations in order to:

(1) Define and govern the employment of workers under 18 years of age and provide minimum wages for these workers at a rate lower than that specified in section 4;

New
Section
36-220.4

New
Section
36-220.5

- (2) Govern piece rates, bonuses, and commissions in relation to time rates;
- (3) Govern part-time rates;
- (4) Govern minimum daily wages;
- (5) Relate to wage provisions governing split shifts and excessive spread of hours; and
- (6) Govern uniforms, tools, travel, and other items of expense incurred by employees as a condition of employment.

(d) The Council of the District of Columbia shall review and make recommendations, as needed, to the Mayor or the Mayor's authorized representative, to ensure that the minimum wage set by the federal government, plus \$1.00, is fair and adequate for employees in the District of Columbia.

Sec. 8. The Mayor shall have the power to administer oaths and require by subpoena the attendance and testimony of witnesses, the production of all books, registers, and other evidence relative to any matters under investigation, at any public hearing or at any meeting of any committee or for the use of the Mayor in securing compliance with this act. In case of disobedience to a subpoena, the Mayor may invoke the aid of the Superior Court of the District of Columbia to require the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpoena, the Court may issue an order to require an appearance before the Mayor, the production of documentary evidence, and the giving of evidence, and any failure to obey the order of the Court may be punished by the Court as contempt.

New
Section
36-220.6

Sec. 9. (a)(1) Every employer subject to any provision of this act or of any regulation or order issued under this act shall make, keep, and preserve for a period of not less than 3 years a record of:

- (A) The name, address, and occupation of each employee;
- (B) A record of the date of birth of any employee under 19 years of age;
- (C) The rate of pay and the amount paid each pay period to each employee;
- (D) The hours worked each day and each workweek by each employee; and
- (E) Any other records or information as the Mayor shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this act or of the regulations issued under this act.

New
Section
36-220.7

(2) Any records shall be open and made available for inspection or transcription by the Mayor or the Mayor's authorized representative at any reasonable time. Every employer shall furnish the Mayor or to the Mayor's authorized representative on demand a sworn statement of records and information upon forms prescribed or approved by the Mayor.

(b) Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the date of the wage payment, gross wages paid, deductions from and additions to wages, net wages paid, hours worked during the pay period, and any other information as the Mayor may prescribe by regulation.

Sec. 10. (a) Every employer who is subject to any provision of this act or any regulation issued under this act shall keep a copy or summary of this act and any applicable regulation issued under this act, in a form prescribed or approved by the Mayor, posted in a conspicuous and accessible place in or about the premises at which any employee covered by the regulation is employed.

New
Section
36-220.8

(b) Employers shall be furnished copies or summaries of the act by the Mayor on request without charge.

Sec. 11. It shall be unlawful for any employer to:

New
Section
36-220.9

(1) Violate any of the provisions of this act or any of the provisions of any regulation issued under this act;

(2) Violate any of the provisions of sections 9 and 10 or any regulation made under the provisions of section 7, or to make any statement, report, or record filed or kept pursuant to the provisions of section 9 or any regulation or order issued under section 7 knowing the statement, report, or record to be false in a material respect;

(3) Discharge or in any other manner discriminate against any employee because that employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to this act or has testified or is about to testify in any proceeding; or

(4) Hinder or delay the Mayor or the Mayor's authorized representative in the enforcement of this act, to refuse to admit the Mayor or the Mayor's authorized representative to any place of employment upon demand, any record to refuse to make available to the Mayor or Mayor's authorized agent required to be made, kept, or preserved under this act, or to fail to post a summary or copy of this act or of any applicable regulation or order, as required under section 10.

Sec. 12. (a) Any person who willfully violates any of the provisions of section 11 shall, upon conviction, be subject to a fine of not more than \$10,000, or to imprisonment of not more than 6 months, or both.

New
Section
36-220.10

(b) No person shall be imprisoned under this section except for an offense committed after the conviction of that person for a prior offense under this section.

(c) Prosecutions for violations of this act shall be in the Superior Court of the District of Columbia and shall be conducted by the Corporation Counsel of the District of Columbia.

Sec. 13. (a) Any employer who pays any employee less than the wage to which that employee is entitled under this act shall be liable to that employee in the amount of the unpaid wages, and an additional amount as liquidated damages, except that if, in any action commenced to recover unpaid wages or liquidated damages, the employer shows to the satisfaction of the court that the act or omission that gave rise to the action was in good faith and that the employer had reasonable grounds for the belief that the act or omission was not a violation of this act, the court may, award no liquidated damages, or award any amount not to exceed the amount specified in this section.

New
Section
36-220.11

(b) Action to recover damages sued for under this act may be maintained in any court of competent jurisdiction in the District of Columbia by any 1 or more employees for and on behalf of the employee

and other employees who are similarly situated. No employee shall be a party plaintiff to any action brought under this act unless the employee gives written consent to become a party and the written consent is filed in the court in which the action is brought.

(c) The court in which the action is brought shall allow for reasonable attorney's fees and costs of the action to be paid by the defendant to the prevailing party.

(d) Any agreement between an employer and employee in which the employee agrees to work for less than the wages to which the employee is entitled under this act or any regulation issued under this act shall be no defense to any action to recover unpaid wages or liquidated damages.

(e) At the written request of any employee who is paid less than the employee is entitled under this act or any regulation issued under this act, the Mayor may take an assignment of the wage claim in trust for the assigning employee and may bring any legal action necessary to collect the claim. In an action of this type, the defendant shall be required to pay the costs and reasonable attorney's fees as may be allowed by the court.

(f) The Mayor is authorized to supervise the payment of unpaid wages owed to any employee under this act or any regulation issued under this act, and the agreement of any employee to accept this payment, shall upon full payment, constitute a waiver by the employee of any right the employee may have under subsection (a) of this section to any unpaid wages, and an additional equal amount as liquidated damages.

Sec. 14. Any action commenced on or after the effective date of this act to enforce any cause of action for unpaid wages or liquidated damages under this act or any regulation issued under this act must be commenced within 3 years after the cause of action accrued or the cause of action shall be forever barred.

New
Section
36-220.12

Sec. 15. Nothing in this act shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the standards applicable under the provisions of this act.

New
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36-220.13

Sec. 16. Section 5(a) of this act shall not apply to any revised wage order issued by the Wage-Hour Board that sets a minimum wage that is higher than the minimum wage set by this act.

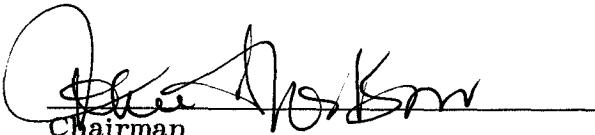
New
Section
36-220.14


Sec. 17. The Mayor shall, pursuant to title 1 of the District of Columbia Administrative Procedures Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 1-1501 *et seq.*), issue rules to implement this act. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturday, Sunday, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed by the Mayor by title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 1-1501 *et seq.*).

Note,
New
Section
36-220

Sec. 18. Sections 1 through 19 of An Act To protect the lives and health and morals of women and minor workers in the District of Columbia, and to establish a Minimum Wage Board, and define its powers and duties, and to provide for the fixing of minimum wages for such workers, and for other purposes, approved September 19, 1918 (40 Stat. 960; D.C. Code § 36-201 *et seq.*), are repealed.

Sec. 19. This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations.


Chairman
Council of the District of Columbia


Mayor
District of Columbia

APPROVED: January 14, 1993



COUNCIL OF THE DISTRICT OF COLUMBIA

Council Period Nine

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: Bill 9-343

Item on Consent Calendar

ACTION & DATE: Adopted First Reading, 12-1-92

VOICE VOTE: Approved

Recorded vote on request

Absent: Cropp, Jarvis, Thomas and Ray

ROLL CALL VOTE: - RESULT

Table with 16 columns: COUNCIL MEMBER, AYE, NAY, N.V., A.B. for members CHMN. WILSON, BRAZIL, CRAWFORD, CROPP, EVANS, JARVIS, LIGHTFOOT, MASON, NATHANSON, RAY, ROLARK, SMITH, JR., THOMAS, SR.

X - Indicates Vote A.B. - Absent N.V. - Present, not voting

CERTIFICATION RECORD

Signature of Secretary to the Council

Date: December 29, 1992

Item on Consent Calendar

ACTION & DATE: Adopted Final Reading, 12-15-92

VOICE VOTE: Approved

Recorded vote on request

Absent: all present

ROLL CALL VOTE: - RESULT

Table with 16 columns: COUNCIL MEMBER, AYE, NAY, N.V., A.B. for members CHMN. WILSON, BRAZIL, CRAWFORD, CROPP, EVANS, JARVIS, LIGHTFOOT, MASON, NATHANSON, RAY, ROLARK, SMITH, JR., THOMAS, SR.

X - Indicates Vote A.B. - Absent N.V. - Present, not voting

CERTIFICATION RECORD

Signature of Secretary to the Council

Date: December 29, 1992

Item on Consent Calendar

ACTION & DATE:

VOICE VOTE:

Recorded vote on request

Absent:

ROLL CALL VOTE: - RESULT

Table with 16 columns: COUNCIL MEMBER, AYE, NAY, N.V., A.B. for members CHMN. WILSON, BRAZIL, CRAWFORD, CROPP, EVANS, JARVIS, LIGHTFOOT, MASON, NATHANSON, RAY, ROLARK, SMITH, JR., THOMAS, SR.

X - Indicates Vote A.B. - Absent N.V. - Present, not voting

CERTIFICATION RECORD

Secretary to the Council

Date