

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor

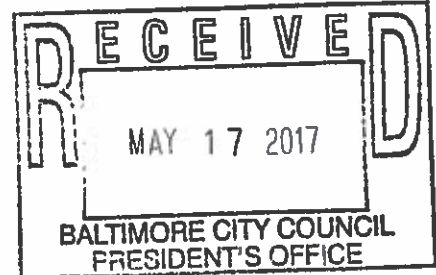


DEPARTMENT OF LAW

101 City Hall
Baltimore, Maryland 21202

May 15, 2017

The Honorable President and Members
of the Baltimore City Council
Attn: Natawna Austin, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 17-0048 – Labor and Employment – Displaced Service Workers Protection

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0048 for form and legal sufficiency. This bill is for the purpose requiring successor entities that take over certain terminated service contracts to retain employees who worked on the previous contracts under certain circumstance. The bill also requires that the terminated contractor provide the successor contractor with the names and other information regarding affected employees. The successor contractor must retain the affected employees for 90 days. After 90 days, if their performance is satisfactory the successor employer must make an offer of employment to those affected employees under the terms and conditions set by the successor employer. The bill prohibits retaliation against workers for seeking assistance from, or cooperating with, the Wage Commission with respect to violations of the bill and empowers the Wage Commission to enforce its provisions using the procedures in the bill.

There are several jurisdictions across the country that have enacted similar legislation. These types of laws have not gone unchallenged. See *Rhode Island Hosp. Assoc. v. City of Providence*, 775 F.Supp. 2d 416 (2011) and *Washington Serv. Contrac. Coalition v. District of Columbia*, 54 F. 3d 811(1995). Challenges to these types of laws have been based on preemption by the NLRA or claims of violation of the Contracts Clause of the U.S. Constitution. To date, these laws have not been invalidated by any court as preempted by the NLRA or in violation of the Contracts clause. This is however an evolving legal issue and the courts could trend in a different direction in the future.

The Law Department does have some amendments to clarify certain parts of the bill.

1. In Sec. 18-1(h), to further clarify the definition of “service employee” insert “(3) “Service employee” does not include a managerial or confidential employee; an employee who works in an executive, administrative or professional capacity or; an employee who earns more than \$30 per hour.”
2. In Sec. 18-3(1), clarify to whom the list must be submitted.

For w/ Amend

3. In Sec. 1803(B)(2), is there a time period within which the written offer must be provided i.e. "no later than X days after the 90 day period?"

Accordingly, with the inclusion of the amendments noted herein, the Law Department can approve the bill for form and legal sufficiency.

Sincerely,



Elena. R. DiPietro
Chief Solicitor

cc: David Ralph, Acting City Solicitor
Kyron Banks, Mayor's Legislative Liaison
Hilary Ruley, Chief Solicitor
Victor Tervalo, Chief Solicitor
Jennifer Landis, Assistant Solicitor