



# POSITION STATEMENT

**PRESENTED TO THE  
BALTIMORE CITY COUNCIL'S  
LABOR COMMITTEE**

**COUNCIL BILL 20-0544  
COVID-19 LAID OFF EMPLOYEES RIGHT OF RECALL  
(As amended by proposed sponsor amendments DLR DRAFT III 09SEPT20)**

**September 17, 2020**

**DONALD C. FRY  
PRESIDENT & CEO  
GREATER BALTIMORE COMMITTEE**

Council Bill 20-0544 entitled COVID-19 Laid-Off Employees Right of Recall requires commercial property employers, event center employers and hotel employers “to make an offer to a laid-off employee for any position which is or becomes available for which the laid-off employee is qualified.”

The law establishes that the “laid-off employee is qualified” and must be offered job opportunity positions that are the same or similar to the laid-off employee’s original position. Additionally, it includes positions for which the laid-off employee could become qualified if provided with the same training that a new worker would receive.

The sponsor has proposed a series of amendments to the bill, which unfortunately do not address most of the GBC’s concerns as submitted in written testimony for the July 16, 2020 hearing.

The first amendment would add a sunset date of December 31, 2022. The original bill, although titled “COVID-19 Laid-Off Employees Right of Recall” had no policy or substantive connection to the pandemic or the State of Emergency that is currently in place in the State of Maryland. While setting a sunset date is an improvement over the original bill, the date selected is arbitrary and still has no direct correlation to the pandemic. The Greater Baltimore Committee (GBC) recommends that a better termination date that should be included would be:

It will remain effective until thirty (30) days after the end of the Governor’s State of Emergency or December 31, 2022, whichever occurs first; and, immediately after that date, with no further action by the Mayor and City Council, this Ordinance will be abrogated and of no further effect.

The sponsor’s second amendment expands the definition of an event center employer and adds a definition for customary seasonal work.

It further expands the definition of laid-off employee to read:

**(G)(1) IN GENERAL.**

**“LAID-OFF EMPLOYEE” MEANS AN INDIVIDUAL:**

**GREATER BALTIMORE COMMITTEE**

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WHO HAD A LENGTH OF SERVICE WITH AN EMPLOYER OF 90 DAYS OR MORE IN THE 12 MONTHS PRECEDING THEIR MOST RECENT SEPARATION FROM ACTIVE SERVICE OR FAILURE TO BE SCHEDULED FOR CUSTOMARY SEASONABLE WORK FROM THAT EMPLOYER.

The GBC supports the initial portion of the expanded definition that establishes a 12-month period of time from the most recent separation from active service. The GBC does not support the addition of individuals who have not been scheduled for customary seasonal work.

A third amendment addresses the priority of job offers to laid-off employees, allowing multiple job offers to be made at the same time, and provides that final offers of employment be conditioned on the priority set forth in the legislation.

A final amendment strikes the existing bill language regarding collective bargaining and substitutes a more general statement describing the circumstances in which provisions of this subtitle may be waived through a collective bargaining agreement.

These amendments do not address the GBC's remaining concerns with the bill, including concerns that the bill interferes with the employer/employee relationship and violates established law of the State of Maryland regarding "at will" employment.

Additional amendments should be considered to address the following issues:

- There is a lack of clarity on what types of positions would be considered Janitorial and Maintenance. The bill should be amended to include definitions for both. A proposed definition of each follows this testimony.
- If an employee signed a severance agreement and received consideration under that agreement as part of a reduction in force, the employee should not be considered eligible as a laid-off employee under the bill. The bill should be amended to add such an exclusion.
- The bill defines a laid-off employee as an individual "who performed in a particular workweek, at least 2 hours of work within Baltimore City for that employer." The 2 hours of work provision is too short. The bill should apply to full-time employees and should require a minimum of 32 hours per week.
- There may be circumstances in which it would no longer be appropriate for a laid-off employee to return to employment with the employer. The committee should adopt an amendment specifying that a laid-off employee is not eligible for recall if, during the period of lay off, the employee:
  - (1) has abused or otherwise misrepresented eligibility for unemployment benefits provided to the employee, or
  - (2) is convicted of a felony.

- The bill creates a rebuttable presumption that any termination after March 5, 2020 is non-disciplinary. Creating a rebuttable presumption places the employer at a disadvantage as it assumes that the termination was not justified. The mere fact that an employee was terminated after a given date should not give rise to the level of creating such a presumption. The rebuttable presumption clause should be deleted.
- The legislation specifies that complaints must be filed within one year from the date of the alleged violation. However, the bill allows complaints to be filed by virtually anyone, not just the person who was impacted by a decision. An amendment should be included to allow only individuals directly impacted by a violation to file a complaint.
- The penalties contained in the legislation are unreasonable and unconscionable. If an employee (or any other person/entity) has a full year to file a complaint and the penalty assessed is \$250 a day for a first offense with each day counting as a separate violation the cost to the employer could reach as much as \$90,000, if not more. The penalties should be reduced or a maximum cap placed on the penalties. The risk of incurring such high penalties will likely have the impact of discouraging companies from doing business in Baltimore.
- Upon a laid-off employee being offered a position, the bill allows the employee at least five business days to accept or decline the offer. This is an excessive period for an employer to have to wait. A two-business day period is more acceptable.

For these reasons, the GBC respectfully requests that all of the amendments referenced in this testimony be adopted or that the Labor Committee give an unfavorable report on Council Bill 20-0544.

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### **ABOUT THE GREATER BALTIMORE COMMITTEE**

*The Greater Baltimore Committee (GBC), a regional business advocacy organization, and its membership are focused on issues related to economic growth, business competitiveness, and job creation. Since its inception the GBC has advocated for policies directed at creating an effective and reliable transportation system, increasing the quality of our school system, improving public safety, encouraging business growth and entrepreneurship, and expanding access to workforce training and job opportunities. The GBC is an advocate on behalf of business and opposed legislative efforts that impose unreasonable burdens on business and its operations.*

PROPOSED AMENDMENT LANGUAGE FOR THE DEFINITION  
OF JANITORIAL EMPLOYEE OR MAINTENANCE EMPLOYEE

Page 3, Line 16 insert (G) Janitorial Employee. “Janitorial Employee” means staff whose primary duties are to perform cleaning, floor care and/or trash removal services.

Page 4, Line 9 insert (I) Maintenance Employee. “Maintenance Employee” means trade laborers who work in the field with the primary duties of performing inspection, maintenance and repair work on building systems and components.