



Legislation Text

File #: 20-0543, Version: 0

Explanation: Capitals indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

* **Warning:** This is an unofficial, introductory copy of the bill.
The official copy considered by the City Council is the first reader copy.

Introductory*

**City of Baltimore
Council Bill**

Introduced by: Councilmember Burnett

A Bill Entitled

An Ordinance concerning
COVID-19 Employee Retention

For the purpose of requiring certain successor business employers taking control over certain businesses from incumbent business employers to retain certain employees; requiring the incumbent business employer to provide the successor business employer with a list of certain employees; permitting a successor business employer from not retaining certain employees under certain circumstances; requiring the posting of notice when certain business undergo a change in control; prohibiting retaliation against employees for seeking assistance from, or cooperating with, the Wage Commission; empowering the Wage Commission to issue subpoenas and administer oaths; establishing certain procedures for the administration of complaints by the Wage Commission; requiring certain reports; defining certain terms; establishing certain penalties; and providing for a special effective date.

By adding

Article 11 - Labor and Employment
Section(s) 19-1 through 19-15, to be under the new subtitle,
"Subtitle 19. COVID-19 Employee Retention"
Baltimore City Code
(Edition 2000)

Section 1. Be it ordained by the Mayor and City Council of Baltimore, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 11. Labor and Employment

Subtitle 19. COVID-19 Employee Retention

§ 19-1. Definitions.

(a) *In general.*

In this subtitle, the follow terms have the meanings indicated.

(b) *Business.*

“Business” means a person who is any of the following, as defined in this section:

- (1) a commercial property employer;
- (2) an event center employer; or
- (3) a hotel employer.

(c) *Change in control.*

“Change in control” means any sale, assignment, transfer, contribution, or other disposition of:

- (1) all or substantially all of the assets used in the operation of a business; or
- (2) a discrete portion of a business that continues to operate as the same type of business of:
 - (i) the incumbent business employer; or
 - (ii) any person who controls the incumbent business employer.

(d) *Commercial property employer.*

“Commercial property employer” means an owner, operator, manager, or lessee, including a contractor, subcontractor, or sublessee, of a non-residential property in the City that employs 25 or more janitorial, maintenance, or security service employees.

(e) *Commission.*

“Commission” means the Wage Commission established by § 2-1 {“Commission established”} of this article, or the Commission’s designee.

(f) *Employee.*

(1) *In general.*

“Employee” means an individual employed by the incumbent business employer:

- (i) who has a length of service with the incumbent business employer of 90 days or more;
- (ii) whose primary place of employment is a business subject to a change in control;
- (iii) who is employed or contracted to perform work functions directly by either:
 - (A) the incumbent business employer; or
 - (B) a person who has contracted with the incumbent business employer to provide services at the business subject to the change in control; and
- (iv) who worked for the incumbent business employer on or after March 5, 2020, and prior to

the execution of a transfer document.

(2) *Exclusions.*

“Employee” does not include any managerial, supervisory, or confidential employee.

(3) *Limitation.*

With respect to commercial property employers, “employee” is limited to only the janitorial, maintenance, or security service employees of the commercial property employer.

(g) *Event center employer.*

(1) *In general.*

“Event center employer” means an owner, operator, or manager of a publicly or privately owned structure within the City that:

- (i) is used for public performances, sporting events, business meetings, or similar events; and
- (ii) either:
 - (A) is 50,000 square feet or more in total area; or
 - (B) has a seating capacity of 1,000 seats or more.

(2) *Inclusions.*

An “event center employer” includes a concert hall, stadium, arena, racetrack, and convention center.

(3) *Exclusion.*

“Event center employer” does not include the Maryland Stadium Authority.

(h) *Hotel employer.*

(1) *In general.*

“Hotel employer” means the owner, operator, or manager of a publicly or privately owned structure that:

- (i) is used for public lodging or other related service for the public; and
- (ii) either:
 - (A) contains 50 or more guest rooms; or
 - (B) has earned gross receipts in the 2019 tax year exceeding \$5 million.

(2) *Inclusions.*

A “hotel employer” includes the owner, operator, manager, or lessee of any food service facility, as

defined in § 6-101(d) {"Definitions: Food service facility"} of the City Health Code, that is physically located on the hotel premises.

(i) *Incumbent business employer.*

"Incumbent business employer" means the person who owns, controls, or operates a business immediately prior to the change in control.

(j) *Length of service.*

"Length of service" means the aggregate total period of time during which an employee has been in active service to an employer, including periods of time when the employee was on leave or on vacation.

(k) *Person.*

"Person" means:

- (1) an individual;
- (2) a partnership, firm, association, corporation, LLC, or other entity of any kind; or
- (3) a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind.

(l) *Successor business employer.*

"Successor business employer" means the person who owns, controls, or operates a business immediately after the change in control.

(m) *Transfer document.*

"Transfer document" means the purchase agreement or other documents creating a binding agreement to effect the change in control.

§ 19-2. {Reserved}

§ 19-3. Employer responsibilities.

(a) *Incumbent business employer to provide list.*

Within 15 days after the execution of a transfer document, the incumbent business employer shall provide to the successor business employer the name, address, date of hire, and occupation classification of each employee.

(b) *Relevant period; preferential list.*

Beginning from the execution of the transition period and continuing for 6 months after the business is open to the public under the successor business employer, the successor business employer shall:

- (1) maintain a preferential hiring list of employees identified by the incumbent business employer under subsection (a) of this section; and
- (2) only hire employees from that list during that period.

(c) *Successor business employer to offer to retain.*

- (1) Subject to paragraph (3) of this subsection, the successor business employer shall offer to retain and, if the offer is accepted, actually retain each employee for no fewer than 90 days following the date on which an employee retained by the successor business employer commences work for the successor business employer for compensation.
- (2) During the 90-day transition employment period, an employee shall be employed under reasonable terms and conditions of employment or as required by law.
- (3) A successor business employer may retain less than all of the employees during the period described in subsection (b) if the successor business employer:
 - (i) determines that fewer employees are required than were required by the incumbent business employer;
 - (ii) retains employees by seniority based on length of service within each job classification; and
 - (iii) hires any additional employees from the preferential hiring list required by subsection (b), in order of length of service, until all employees on that list have been offered employment.

(d) *Offers of employment.*

- (1) Any offer of employment made to an employee under this subtitle shall:
 - (i) be in writing and include the name, address, date of hire, and job classification of each employee; and
 - (ii) remain open for at least 10 business days from the date of the offer.
- (2) The successor business employer shall retain a copy of any offers made to employees under this subtitle for at least 3 years from the date the offer was made.

(e) *Retained employees.*

(1) *Discharge prohibited.*

During the 90-day transition employment period, the successor business employer may not discharge an employee retained under this section without just cause.

(2) *Conclusion of transition period.*

(i) *Written performance evaluation required.*

At the end of the 90-day transition employment period, the successor business employer shall perform a written performance evaluation for each employee retained pursuant to this section.

(ii) *Satisfactory evaluation.*

If an employee's performance during the 90-day transition employment period is satisfactory, the successor business employer shall consider offering the employee continued employment under the terms and conditions established by the successor business employer or as required by

law.

(iii) *Retention of evaluations.*

The successor business employer shall retain a record of the written performance evaluation required by this subsection for a period of no fewer than 3 years.

§ 19-4. {Reserved}

§ 19-5. Notice of change in control.

(a) *In general.*

The incumbent business employer shall post written notice of the change in control at the location of the affected business.

(b) *Term of notice.*

(1) The notice required by this section shall be posted within 5 business days of the execution of the transfer document.

(2) The notice shall remain posted during any closure of the business and for 6 months after the business is open to the public under the successor business employer.

(c) *Contents.*

The Notice required by this section shall include:

(1) the name of the incumbent business employer and its contact information;

(2) the name of the successor business organization and its contact information; and

(3) the effective date of the change in control.

(d) *Location of notice.*

The notice required by this section shall be posted in a conspicuous place at the business that is visible to all employees and applicants for employment.

§ 19-6. {Reserved}

§ 19-7. Retaliation prohibited.

(a) *In general.*

An incumbent business employer or a successor business employer may not discharge or reduce the compensation of any employee for:

(1) making a complaint to the Commission alleging a violation of this subtitle; or

(2) participating in any of the Commission's proceedings concerning an alleged violation of this subtitle.

(b) *Remedial action for violation.*

If the Commission finds that an employer has violated subsection (a) of this section it may, pursuant to the procedures provided in § 19-9 {"Enforcement procedures"} of subtitle, order appropriate restitution or the reinstatement of the employee with backpay to the date of the violation.

§ 19-8. *{Reserved}*

§ 19-9. **Enforcement procedures.**

(a) *Filing complaints.*

Any person subjected to a practice in violation of this subtitle, or any group or person seeking to enforce this subtitle, may file a written complaint with the Commission.

(b) *Complaint requirements.*

A complaint filed under this section must:

- (1) be filed within 1 year of the alleged violation;
- (2) be filed under oath; and
- (3) include:
 - (i) the particulars of the alleged violation;
 - (ii) the name and address of the person alleged to have committed the violation; and
 - (iii) any other information required by the Commission.

(c) *Complaints by Commission.*

The Commission, acting on its own initiative and without any complaint from an employee, may itself file a complaint against an incumbent business employer or successor business employer whenever the Commission has reasonable cause to believe that the incumbent business employer or successor business employer is or has been in violation of this subtitle.

(d) *Investigation for probable cause.*

After the filing of a complaint, either by a person claiming to be aggrieved as set forth above or by the Commission, the Commission must:

- (1) investigate the facts alleged in the complaint; and
- (2) make a finding of probable cause or lack of probable cause for the complaint.

(e) *Subpoenas; oaths.*

(1) In enforcing this subtitle, the Commission may:

- (i) issue subpoenas to compel the attendance and testimony of witnesses and the production of books, papers, records, and documents relating to payroll records, or otherwise necessary for

hearings, investigations, or proceedings; and

(ii) administer oaths, subject to the penalties for perjury, to all witnesses.

(2) Any subpoena issued under this subsection shall be served by:

(i) the Sheriff of Baltimore City or any of the Sheriff's deputies; or

(ii) any other person authorized by the Maryland Rules of Procedure to effectuate in personam service.

(f) *Subpoena enforcement.*

(1) In case of disobedience to a subpoena, the Commission may apply to a court of appropriate jurisdiction for an order requiring the attendance and testimony of witnesses and the production of books, papers, records, and documents.

(2) The court, in case of contumacy or refusal to obey any subpoena issued under this section, after notice to the person subpoenaed, and upon finding that the attendance or testimony of the witnesses or the production of the books, papers, records, and documents, as the case may be, is relevant or necessary for a hearing, investigation, or proceeding of the Commission, may issue an order requiring the attendance and testimony of the sought witnesses and the production of the sought books, papers, records, and documents, or any of them.

(3) Any failure to obey such an order of the court may be punished by the court as contempt.

(g) *Dismissal for lack of probable cause.*

If the Commission finds that the complaint lacks probable cause, then it must dismiss the complaint and mail copies of its finding to the respondent and complainant.

(h) *Probable cause conference; settlement agreement.*

(1) If the Commission finds probable cause for the complaint, the Commission must attempt, by means of conference, to:

(i) persuade the respondent to cease and desist its illegal action;

(ii) reinstate any employees to their former positions under the conditions required by § 19-3 {"Employer responsibilities"} of this subtitle; and

(iii) order payment to any employees of all wages and other compensation owed for the period of time that they were unlawfully terminated, as provided in § 19-10 {"Penalties and fines"} of this subtitle.

(2) Any agreement reached between the respondent and the Commission must be reduced to writing and a copy of the agreement must be furnished to the complainant and the respondent.

(i) *Final order.*

(1) The Commission may issue a final order on its own motion if:

(i) the Commission and the respondent fail to reach an agreement within 30 days of the date set

for the probable cause conference, or

- (ii) the respondent fails to meet its obligations under an agreement with the Commission within the time specified in the agreement.

(2) A final order issued under this subsection may:

- (i) require the reinstatement of an employee or employees wrongfully terminated in violation of § 19-3 {"Employer responsibilities"} of this subtitle;
- (ii) require the respondent to pay each employee wrongfully terminated in violation of § 19-3 {"Employer responsibilities"} of this subtitle his or her lost wages and other compensation to the date of the violation, as provided in § 19-10 {"Penalties and fines"} of this subtitle; and
- (iii) direct the cessation of all practices by the respondent that are contrary to the provisions of this subtitle or the rules and regulations of the Commission.

(3) A copy of an order issued under this subtitle must be furnished to the respondent by registered mail within 3 days of its issuance.

(j) *Judicial and appellate review.*

- (1) Any person aggrieved by an order of the Commission may seek judicial review of that order by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules.
- (2) A party to the judicial review may appeal the court's final judgment to the Court of Special Appeals in accordance with the Maryland Rules.

(k) *Referral to Solicitor.*

If, within 30 days of the issuance of a final order under subsection (i) of this section, the respondent has failed to comply with the order, the Commission may certify the proceedings to the City Solicitor and request that the Solicitor petition the Circuit Court of Baltimore City to enforce the order.

§ 19-10. Penalties and fines.

(a) *In general.*

The Commission may order any successor business employer who commits a violation of this subtitle to:

- (1) pay to the aggrieved employee or employees impacted the wages and other compensation lost as a result of the successor business employer's violation of § 19-3 {"Employer responsibilities"}, with interest computed at 10% per annum on wages and other monetary compensation due; and
- (2) reinstate any aggrieved employee or employees under the conditions required by § 19-3 {"Employer responsibilities"} of this subtitle.

(b) *Fines.*

- (1) Any successor business employer that violates this subtitle shall forfeit and pay to the City of Baltimore a civil penalty as follows:

- (i) for a 1st offense, \$250 for each violation;
- (ii) for a 2nd offense, \$500 for each violation; and
- (iii) for each subsequent offense, \$1,000 for each violation.

(2) Each day that a violation continues constitutes a separate offense.

§ 19-11. Collective bargaining agreements.

(a) *In general.*

(1) Nothing in this subtitle may be construed to supercede any collective bargaining agreement that:

(i) was effective on _____, 2020 *{When codified, the Department of Legislative Reference shall insert the effective date of this Subtitle 19}*; and

(ii) contained an employee retention provision.

(2) This subtitle applies if a collective bargaining agreement effective on _____, 2020 *{When codified, the Department of Legislative Reference shall insert the effective date of this Subtitle 19}* does not have an employee retention provision.

(b) *Future collective bargaining agreements.*

A re-negotiated or new collective bargaining agreement may only waive the provisions of this subtitle in clear and unambiguous terms.

§ 19-12. Waiver of subtitle prohibited.

(a) *In general.*

Except as provided in § 19-11 {"Collective bargaining agreements"} of this subtitle, an employee may not waive any provision of this subtitle.

(b) *Violation of this subtitle.*

Any request by an incumbent business employer or a successor business employer to an employee to waive his or her rights under this subtitle is a violation of this subtitle.

§ 19-13. Rules and regulations.

(a) *Commission may adopt.*

The Commission may adopt rules and regulations to implement this subtitle.

(b) *Filing with Legislative Reference.*

A copy of all rules and regulations adopted under this subtitle must be filed with the Department of Legislative Reference before they become effective.

§ 19-14. Report to Mayor and City Council.

On or before June 30, 2022, the Wage Commission shall report to the Mayor and City Council on:

- (1) the effectiveness of the provisions of this subtitle in protecting employees when a business changes ownership;
- (2) recommendations for additional protections that further the intent of this subtitle; and
- (3) whether the provisions of this subtitle are still necessary based on the City's recovery from the impacts of the COVID-19 pandemic.

§ 19-15. Severability.

All provisions of this subtitle are severable. If a court determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the provision to any person or circumstances is invalid, the remaining provisions and the application of those provisions to other persons or circumstances are not affected by that decision.

Section 2. And be it further ordained, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

Section 3. And be it further ordained, That this Ordinance takes effect on the date it is enacted.