

ARTICLE 11
LABOR AND EMPLOYMENT

(As Last Amended by Ord. 22-125)

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DIVISION I: MINIMUM WAGE LAW**SUBTITLE 1
DEFINITIONS; GENERAL PROVISIONS****§ 1-1. Definitions.**(a) *In general.*

The terms hereinafter set forth, wherever used in this Division I, are defined as follows.

(b) *Employ.*

“Employ” means to permit to work.

(c) *Employer.*

(1) “Employer” means any person, individual, partnership, association, corporation, business trust, or any other organized group or successor of an individual, partnership, association, corporation, trust of persons employing 2 or more persons in the City of Baltimore.

(2) “Employer” shall not include the United States, any State, or any political subdivision thereof.

(d) *Employee.*

(1) “Employee” means any person permitted or instructed to work or be present by an employer.

(2) “Employee” shall not include:

(i) persons engaged in the activities of an educational, charitable, religious, or other nonprofit organization where the services rendered to such organization are on a voluntary basis, or in return for charitable aid conferred upon such person;

(ii) persons employed in a bona fide executive, supervisory, or professional capacity;

(iii) persons employed by any member of their immediate family;

(iv) persons compensated upon a commission basis only; or

(v) persons employed as domestics within a home, only to the extent that such persons have been exempted from the Federal Fair Labor Standards Act as amended and as hereafter amended.

(City Code, 1966, art. 19, §52; 1976/83, art. 19, §64.) (Ord. 64-370; Ord. 65-491; Ord. 66-739; Ord. 67-1219; Ord. 70-798; Ord. 75-969; Ord. 78-778; Ord. 90-601.)

§ 1-2. Findings; policy.(a) *Findings of fact.*

The Mayor and City Council, after conducting an investigation of employment conditions in the City of Baltimore, hereby find:

- (1) that many persons employed in Baltimore are paid wages which, in relation to the cost of living in the City and the income necessary to sustain minimum standards of decent living conditions, are insufficient to provide adequate maintenance for themselves and their families;
- (2) that the employment of such persons at such wages:
 - (i) impairs the health, efficiency, and well-being of the persons so employed and of their families;
 - (ii) reduces the purchasing power of such persons;
 - (iii) diminishes and depresses business, trade, and industry in the City;
 - (iv) threatens the stability and well-being of the City's economic life;
 - (v) fosters and contributes toward slum conditions and housing evils;
 - (vi) creates conditions of want and deprivation tending to weaken and undermine family life and breed crime and juvenile delinquency;
 - (vii) threatens the health, welfare, and well-being of the people of the City; and
 - (viii) injures the City economically.

(b) *Declaration of policy.*

- (1) Accordingly, it is the declared policy of the Mayor and City Council that such conditions be eliminated as rapidly as practicable without substantially curtailing opportunities for employment or earning power.
- (2) To that end, legislation is necessary in the public interest in order to end these conditions so inimical to the public health, safety, and welfare of the citizens of Baltimore, to establish minimum wage standards for all employees as herein defined at a level consistent with their health, welfare, and general well-being.

(*City Code, 1966, art. 19, §61; 1976/83, art. 19, §71.*) (Ord. 66-739.)

§ 1-3. *{Repealed by Ord. 22-125}*

Editor's Note: For the new, Code-wide standard for severability, *see* City General Provisions Article, § 1-214.

SUBTITLE 2
WAGE COMMISSION

§ 2-1. Commission established.

There is hereby created and established the Wage Commission of Baltimore City, with the membership, powers, and duties as in this Division I provided, which shall be responsible for the administration and proper operation of the minimum wage law.

(City Code, 1966, art. 19, §54(a); 1976/83, art. 19, §62(a).) (Ord. 64-370; Ord. 78-778.)

§ 2-2. Members.

(a) *In general.*

The Commission comprises 5 persons of integrity and experience, who shall be appointed by the Mayor subject to the approval of the City Council.

(b) *Vacancies.*

If a vacancy occurs on the Commission, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(c) *Oath.*

Each member of the Commission, within 10 days after appointment, shall take an oath of office that so far as it devolves upon him or her, she or he will diligently and honestly administer the affairs of the Commission, and the oath shall be subscribed to by the member making it and certified by the Mayor before whom it is taken.

(d) *Compensation; expenses.*

The Commission members shall serve without compensation, but shall be reimbursed for all expenses necessarily incurred.

(City Code, 1966, art. 19, §54(b); 1976/83, art. 19, §62(b).) (Ord. 370, 1964-65; Ord. 67-1219; Ord. 99-526.)

§ 2-3. Voting; quorum.

(a) *1 vote per member.*

Each member of the Commission shall be entitled to 1 vote.

(b) *Majority a quorum.*

A majority of said Commission shall constitute a quorum for the transaction of any business, the exercise of any power in the performance of any duty authorized or imposed by this Division I.

(City Code, 1966, art. 19, §54(c); 1976/83, art. 19, §62(c).) (Ord. 64-370.)

§ 2-4. Chair, staff, and expenses.**(a) Chair.**

The Mayor shall designate 1 member of the Commission as its chairman.

(b) Director.

The Commission shall, by a majority vote of all its members, appoint an executive director.

(c) Staff.

It shall employ such other persons as may be required to administer effectively the provisions of this Division I.

(d) Compensation; expenses.

Compensation of all persons so employed by the Commission and all other necessary expenses of the Commission shall be paid at such rates and in such amounts as the Board of Estimates shall approve and in accordance with the appropriations in the annual Ordinance of Estimates.

(City Code, 1966, art. 19, §54(d); 1976/83, art. 19, §62(d).) (Ord. 64-370.)

§ 2-5. General powers and duties.

The Commission is authorized to and shall have the power to:

- (1) formulate and carry out a comprehensive educational and action program designed to eliminate the payment of substandard wages to employees in the City of Baltimore;
- (2) receive, investigate, and take action as herein provided on all complaints of payment of less than the minimum wage required by this Division I;
- (3) conduct such investigations on its own initiative as it deems proper to effectuate the purposes of this Division I;
- (4) monitor and assist in the fulfillment of any agreements negotiated with employers to effect their compliance with this Division I;
- (5) make appropriate findings as a result of any of its investigations; and
- (6) in carrying out its powers and duties, inspect payroll records of any business without prior notice.

(City Code, 1966, art. 19, §55(1) - (3); 1976/83, art. 19, § 63(1) - (3), (7).) (Ord. 64-370; Ord. 66-739; Ord. 67-1219; Ord. 70-798; Ord. 90-601.)

§ 2-6. Rules and regulations.*(a) Commission may adopt.*

Subject to Title 4 {“Administrative Procedure Act – Regulations”} of the City General Provisions Article, the Commission is authorized to and shall have the power to adopt such rules and regulations as it may deem necessary to:

- (1) effect compliance with this Division I;
- (2) govern its procedures; and
- (3) execute the duties and responsibilities imposed on it herein.

(b) Scope.

Such rules and regulations may include, but are not limited to:

- (1) those further defining:
 - (i) persons engaged in voluntary service to a nonprofit organization;
 - (ii) persons employed in a bona fide executive, supervisory, or professional capacity;
 - (iii) persons employed by any member of their immediate family; and
 - (iv) persons compensated upon a commission basis; and
- (2) those:
 - (i) establishing deductions in allowance for the reasonable value of uniforms, board, lodging, or other facilities, items, or services supplied by the employer;
 - (ii) defining students and employees customarily receiving tips; and
 - (iii) defining handicapped persons,

for the purposes of § 3-2 of this Division I.

Editor’s Note: By authority of Ordinance 20-431, Section 5, the Director of Legislative Reference, in consultation with the Law Department, has conformed the text of this section to refer expressly to the requirements of the recently-enacted Administrative Procedure Act that, effective January 15, 2021, governs the proposal, adoption, and publication of administrative rules and regulations.

(City Code, 1966, art. 19, §55(4); 1976/83, art. 19, §63(4).) (Ord. 64-370; Ord. 66-739; Ord. 67-1219; Ord. 70-798; Ord. 78-778; Text Conformed 02/18/21.)

SUBTITLE 3
WAGE REQUIREMENTS

§ 3-1. Minimum wage required.

(a) *Employers must pay.*

Subject to the other provisions of this Division I, every employer operating and doing business in Baltimore City shall pay wages to each employee in the City at a rate not less than the minimum wage required by the Federal Fair Labor Standards Act, as amended.

(b) *Violations.*

It is a violation of this Division I for any employer to pay any employee a wage less than the minimum wage required by this Division I, and it is a separate violation each time an employee is not paid the wage required by this Division I at the time the employee is entitled to be paid. (City Code, 1966, art. 19, §53(1st cl.); 1976/83, art. 19, §65(a.) (Ord. 64-370; Ord. 67-1219; Ord. 70-798; Ord. 74-698; Ord. 78-778; Ord. 90-601; Ord. 97-167.)

§ 3-2. Exceptions.

(a) *Allowance for employer-supplied items or services.*

(1) For purposes of this Division I, wages shall include the reasonable value, as determined by the Wage Commission, of uniforms, board, lodging, or other facilities, items, or services furnished such employee by the employer.

(2) Provided that the Wage Commission is empowered to determine such value by reference to the average cost to the employer or to groups of employers similarly situated.

(b) *Full-time students.*

(1) Any employee who is a full-time student in a primary or secondary school, as such term is further defined by the Wage Commission, may be paid 85% of the minimum wage prescribed herein.

(2) Provided, however, that such students may not be employed for more than 28 hours per week while attending school.

(3) It shall be a violation of this Division I for any employer to employ such a full-time student for more than 28 hours per week while school is in session.

(c) *Work-study programs.*

Students enrolled in an approved work-study program shall be exempt from the limitations of subsection (b) of this section and from the minimum wage requirements of this Division I. Work study programs must be approved by the Wage Commission.

(d) *Employees customarily receiving tips.*

- (1) With respect to any employee engaged in an occupation in which he customarily and regularly receives more than \$30 a month in tips, the employer shall pay wages in the amount not less than the amount required to be paid a tipped employee under the Federal Fair Labor Standards Act, as amended.
- (2) It is the employer's obligation to provide evidence of any amount claimed by him as being received by his employee as tips.

(e) *Employees with disabilities.*

- (1) The Wage Commission may, in its discretion, recognize certificates issued by the State of Maryland for payment of less than the minimum wage to persons who are mentally or physically handicapped, or the Commission may issue its own certificates.
- (2) Provided, that the Commission's said recognition or certification may be upon such terms and for such period of time as the Commission deems appropriate.

(f) *Opportunity wages.*

An employer may pay an opportunity wage (i.e., a wage below the minimum wage) to any employee, but only under the conditions and limitations authorized for opportunity wages by the Federal Fair Labor Standards Act, as amended.

(City Code, 1966, art. 19, §53(2nd cl.); 1976/83, art. 19, §65(b) - (f).) (Ord. 67-1219; Ord. 70-798; Ord. 70-926; Ord. 74-698; Ord. 78-778; Ord. 90-601; Ord. 97-167.)

§ 3-3. Overtime pay required.(a) *In general.*

Every employer shall pay each of its employees, for all hours worked in excess of 40 during any work week, at a rate which is 1½ times the employee's usual hourly wage rate, except that no employer will be liable for overtime pay to an employee under this section to a greater extent than it is liable to such employee under the Maryland Wage and Hour Law (Title 3, Subtitle 4 of the State Labor and Employment Article) or the Federal Fair Labor Standards Act (29 U.S.C. §§ 201 - 219).

(b) *Governing standards.*

- (1) Except that any gross receipts dollar volume limitation to coverage contained in the Maryland Wage and Hour Law or the Federal Fair Labor Standards Act will not be applicable hereunder.
- (2) For purposes of this section, an employee's "usual hourly wage rate" and "work week" shall be determined under the provisions of the Federal Fair Labor Standards Act unless his employer is not subject to that Act, in which case such determinations shall be made under the provisions of the Minimum Wage Act of the State of Maryland.

(c) *Violations.*

It shall be a violation of this Division I for any employer to pay any employee a wage below the minimum overtime wage set forth herein, and it shall be deemed a separate violation each work week an employee is not paid the wage required by this Division I at the time the employee is entitled to be paid.

(*City Code, 1976/83, art. 19, §67.*) (*Ord. 78-778; 90-601.*)

§ 3-4. Withholding.

(a) *Required consent.*

No employer shall withhold any part of the wages or salary of any employee, except for those deductions in accordance with law, without written and signed authorization of the employee.

(b) *Violations.*

It shall be a violation of this Division I for any employer to make any such prohibited withholding from the pay of any employee, and it shall be deemed a separate violation when any such prohibited withholding is made from any paycheck of any employee.

(*City Code, 1976/83, art. 19, §68(b)(4).*) (*Ord. 78-778; Ord. 90-601.*)

§ 3-5. Wages due on termination of employment.

It shall be a violation of this Division I for any employer to refuse to pay to any employee who is terminated, resigns, retires, or who otherwise ends or suspends his employment, all wages due and owing to said employee on the next regular payday that said wages would otherwise have been paid.

(*City Code, 1976/83, art. 19, §66.*) (*Ord. 78-778; Ord. 90-601.*)

§ 3-6. Posting summary of law.

(a) *Employer to post.*

Every employer subject to this Division I shall keep a summary of this Division I, furnished by the Commission without charge, posted in a conspicuous place on or about the premises wherein any person subject to this Division I is employed.

(b) *Violations.*

Failure to so post said summary shall be deemed a violation of this Division I.

(*City Code, 1966, art. 19, §58; 1976/83, art. 19, §69.*) (*Ord. 64-370; Ord. 78-778; Ord. 90-601.*)

§ 3-7. Notices to employees.

(a) *Time of hiring.*

(1) Every employer subject to this Division I shall notify his employees at the time of hiring of:

- (i) their respective rates of pay; and
- (ii) the regular payday designated by the employer.

(2) Any employer who fails to so notify his employees shall be in violation of this Division I, and it shall be deemed a separate violation as to each employee not notified as required herein.

(b) *Changes in rates or paydays.*

- (1) Every employer subject to this Division I shall notify his employees of any changes in the pay rates or payday at least 1 pay period prior to the change.
- (2) It shall be a violation of this Division I for any employer to change the pay rate or payday of any employee without giving to said employee notice as required herein.

(c) *Itemized pay statement.*

- (1) Every employer subject to this Division I shall furnish each employee with a statement each pay period which shall, in each instance, clearly show:
 - (i) gross earnings;
 - (ii) itemized deductions;
 - (iii) hours worked; and
 - (iv) rate of pay.
- (2) It shall be a violation of this Division I for any employer to fail to provide any employee with the statement required herein, and it shall be deemed a separate violation any time the statement required herein is not provided to any employee.

(City Code, 1976/83, art. 19, §68(b)(1) - (3).) (Ord. 78-778; Ord. 90-601.)

§ 3-8. Payroll records.

(a) *Required information; maintenance period.*

- (1) Every employer subject to this Division I shall keep, for a period of not less than 3 years, a true and accurate record of the:
 - (i) name,
 - (ii) social security number,
 - (iii) address at time of employment,
 - (iv) occupation,

(v) time worked each day, and

(vi) rate of pay

for each of his employees.

- (2) Any employer who fails to maintain such records shall be in violation of this Division I, and it shall be deemed a separate violation thereof as to each employee for whom records are not fully maintained.

(b) *Right of inspection.*

- (1) The Commission or its authorized representative shall have the right, at all reasonable times, to enter upon the premises of any employer to inspect such records to ascertain whether the provisions of this Division I have been complied with.

- (2) It shall be a violation of this Division I to prevent, obstruct, or to attempt to prevent or obstruct such entries and inspections.

(City Code, 1966, art. 19, §57; 1976/83, art. 19, §68(a).) (Ord. 64-370; Ord. 66-739; Ord. 67-1219; Ord. 70-798; Ord. 75-969; Ord. 78-778; Ord. 90-601.)

SUBTITLE 4
ENFORCEMENT PROCEDURES

§ 4-1. Complaints by employee.

(a) *Filing with Commission.*

Any person claiming to be aggrieved by an alleged payment of a wage of a lesser amount than required by this Division I may, by himself or his attorney, within 1 year after the occurrence of the alleged unlawful act, make, sign, and file with the Commission a complaint in writing, under oath.

(b) *Contents.*

The complaint shall state the name and address of the employer alleged to have paid the unlawful wage (hereinafter referred to as the respondent) and the particulars thereof, and contain such other information as may be required by the Commission.

(City Code, 1966, art. 19, §56(a)(1st, 2nd sens.); 1976/83, art. 19, §70(a)(1st, 2nd sens.). (Ord. 64-370; Ord. 66-739.)

§ 4-2. Complaints by Commission.

The Commission shall have the right, acting upon its own initiative and without any complaint from an employee, to file a complaint against an employer whenever the Commission has reasonable cause to believe that such employer is or has been in violation of the provisions of this Division I.

(City Code, 1966, art. 19, §56(a)(3rd sen.); 1976/83, art. 19, §70(a)(3rd sen.). (Ord. 64-370; Ord. 66-739.)

§ 4-3. Investigation for probable cause.

After the filing of any such complaint, either by a person claiming to be aggrieved as set forth in § 4-1 or by the Commission, the Commission shall:

(1) investigate the facts alleged therein; and

(2) make a finding of probable cause for the said complaint or lack of it.

(City Code, 1966, art. 19, §56(b)(1st sen.); 1976/83, art. 19, §70(b)(1st sen.). (Ord. 64-370; Ord. 66-739.)

§ 4-4. Subpoenas; oaths.

(a) *Commission may issue.*

In enforcing this Division I, the Commission may:

- (1) issue subpoenas to compel the attendance and testimony of witnesses and the production of books, papers, records, and documents relating to payroll records, or necessary for hearings, investigations, or proceedings; and
- (2) administer oaths, subject to the penalties for perjury, to all witnesses.

(b) *Service.*

Any such subpoena shall be served by:

- (1) the Sheriff of Baltimore City or any of his deputies; or
- (2) any other person authorized by the Maryland Rules of Procedure to effectuate in personam service.

(c) *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) Said court, in case of contumacy or refusal to obey any such subpoena, after notice to the person subpoenaed, and upon finding that the attendance or testimony of such witnesses or the production of such books, papers, records, and documents, as the case may be, is relevant or necessary for such hearings, investigations, or proceedings of the Commission, may issue an order requiring the attendance and testimony of such witnesses and the production of such books, papers, records, and documents, or any of them.
- (3) Any failure to obey such order of the court may be punished by the court as contempt thereof.

(City Code, 1966, art. 19, §55(5); 1976/83, art. 19, §63(5).) (Ord. 64-370; Ord. 66-739; Ord. 67-1219; Ord. 90-601; Ord. 04-672.)

§ 4-5. Dismissal for lack of probable cause.

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

(City Code, 1966, art. 19, §56(b)(2nd sen.); 1976/83, art. 19, §70(b)(2nd sen.). (Ord. 64-370; Ord. 66-739.)

§ 4-6. Probable cause conference; settlement agreement.

(a) *Conference.*

If the Commission finds probable cause for the complaint, the Commission shall attempt, by means of conference, to:

- (1) persuade respondent to cease and desist its illegal action;

- (2) commence paying complainant such lawful wages as are required by this Division I; and
- (3) reimburse complainant for the difference between what he had been receiving as wages and what he should have lawfully received.

(b) *Settlement agreement.*

Any such agreement reached between respondent and the Commission shall be reduced to writing and a copy thereof furnished to complainant and respondent.

(City Code, 1966, art. 19, §56(b)(3rd, 4th sens.); 1976/83, art. 19, §70(b)(3rd, 4th sens.). (Ord. 64-370; Ord. 66-739.)

§ 4-7. Final order.

(a) *In general.*

If:

- (1) the Commission and the respondent shall fail to reach agreement, or
- (2) the respondent shall fail to meet his obligations under such agreement:
 - (i) within 30 days thereof, or
 - (ii) within such other time as may be specified therein,

the Commission shall make such final order in the proceedings as it deems appropriate to:

- (3) require the payment of all wages due the respondent’s employees hereunder, and
- (4) direct the cessation of all practices by the respondent which are contrary to the provisions of this Division I and/or rules and regulations of the Commission.

(b) *Service of order.*

A copy of such order shall be furnished the respondent by registered mail within 3 days of its passage.

(City Code, 1966, art. 19, §56(c); 1976/83, art. 19, §70(c). (Ord. 64-370; Ord. 66-739.)

§ 4-8. Judicial and appellate review.

(a) *Judicial review.*

A respondent aggrieved by an order of the Commission under this Division I may seek judicial review of that order by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure.

(b) *Appellate review.*

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 of Procedure.
(*City Code, 1976/83, art. 19, §70(d)(2nd sen.*.) (Ord. 70-798; Ord. 04-672; Ord. 19-332.)

§ 4-9. Referral to Solicitor.

If, within 30 days of the passage of such order, the respondent shall have failed to comply therewith, the Wage Commission may certify such proceedings to the City Solicitor and request that he petition the Circuit Court of Baltimore City to enforce the said order and direct payment to the aggrieved employee.
(*City Code, 1976/83, art. 19, §70(d)(1st sen.*.) (Ord. 70-798; Ord. 78-778.)

§ 4-10. Confidential information.

(a) *Employer's payroll.*

The records of the Commission in any proceeding or investigation made pursuant to the provisions of this Division I shall be kept confidential to the extent that they disclose the payroll of any employer, except for the use of a complainant employee or other public agency.

(b) *Identity of complainant.*

(1) Neither the Commission nor any of its employees may be compelled in any hearing before the Commission or other administrative proceeding, to disclose the identity of any person filing a complaint with the Commission under the provisions of this Division I.

(2) The Commission shall, however, have the right in its sole discretion to make such disclosure in any instance where the Commission deems it appropriate to do so.

(*City Code, 1966, art. 19, §55(6); 1976/83, art. 19, §§63(6), 68(a)(3).*) (Ord. 64-370; Ord. 66-739; Ord. 67-1219; Ord. 70-798; Ord. 75-969; Ord. 78-778; Ord. 90-601.)

§ 4-11. Disposition of unclaimed recoveries.

Any sums recovered by the Wage Commission for Baltimore City and not paid to the employee because of inability to locate said employee within a period of 1 year shall be paid into the Treasury of the City of Baltimore.
(*City Code, 1976/83, art. 19, §70A(d)(2).*) (Ord. 90-601.)

**SUBTITLE 5
OTHER PROHIBITED CONDUCT**

§ 5-1. By employer - retaliation against employee.

(a) *In general.*

It shall be unlawful, and a violation of this Division I, for any employer to discharge or reduce the compensation of any employee for:

- (1) making a complaint to the Wage Commission;
- (2) participating in any of its proceedings; or
- (3) availing himself of any of the civil remedies provided herein.

(b) *Restitution or reinstatement with backpay.*

In such a case, the Wage Commission may, pursuant to the procedures provided in Subtitle 4 hereof, order appropriate restitution or the reinstatement of such employee with backpay to the date of violation.

(City Code, 1966, art. 19, §56(d); 1976/83, art. 19, §70A(a).) (Ord. 67-1219; Ord. 70-798; Ord. 78-778; Ord. 90-601.)

§ 5-2. By employer - violation of rule or regulation.

It shall be unlawful, and a violation of this Division I, for any employer to violate the rules and regulations of the Commission.

(City Code, 1976/83, art. 19, §70A(c).) (Ord. 90-601.)

§§ 5-3 to 5-5. {Reserved}

§ 5-6. By employees.

It shall be unlawful, and a violation of this Division I, for any employee to:

- (1) make any groundless, unfounded, or malicious complaint to the Commission; or
- (2) in bad faith, institute or testify in any proceeding before the Commission under the provisions hereof.

(City Code, 1976/83, art. 19, §70A(b).) (Ord. 90-601.)

**SUBTITLE 6
PENALTIES AND FINES**

§ 6-1. Interest on unpaid wages.

(a) *In general.*

Any employer who commits a violation of any of the provisions of this Division I shall be liable to the employee or employees affected:

- (1) in the amount of their unpaid minimum wages, wages due, or overtime compensation, as the case may be; and
- (2) an additional amount of 10% per annum interest on unpaid minimum wages, wages due, or overtime compensation.

(b) *Computation of interest.*

Such interest shall be calculated from the date of the violation resulting in the unpaid minimum wage, unpaid wages due, or unpaid overtime compensation until the date said monies are actually paid to the aggrieved employee.

(City Code, 1976/83, art. 19, §70A(d)(1).) (Ord. 90-601.)

§ 6-2. Fines.

Any employer or employee who violates this Division I shall forfeit and pay to the City of Baltimore a penalty as follows:

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

(City Code, 1966, art. 19, §59; 1976/83, art. 19, §70A(d)(3).) (Ord. 64-370; Ord. 90-601; Ord. 08-084.)

§ 6-3. Actions by employee.

(a) *In general.*

Nothing contained in this Division I shall be in any way construed to limit or abridge any rights possessed by any employee at common law, by statute, or by ordinance to bring a civil action to redress underpayments of wages.

(b) *Civil action by employee.*

- (1) Any employee who is aggrieved by underpayment or other violations of this Division I shall be entitled to bring such an action, and to recover therein such costs and reasonable counsel fees as the Court may allow.

(2) Any agreement between such employee and his employer to work for less than the minimum wage prescribed therein is invalid and shall be no defense to such action.

(3) Proceedings before the Wage Commission shall not be considered a precondition to such civil action.

(City Code, 1966, art. 19, §60; 1976/83, art. 19, §70B.) (Ord. 64-370; Ord. 70-798; Ord. 78-778; Ord. 90-601.)

SUBTITLES 7 TO 10
{RESERVED}

DIVISION II: MISCELLANEOUS REGULATIONS**SUBTITLE 11
LIE DETECTOR TESTS****§ 11-1. “Employer” defined.**

The term “employer” as used in this subtitle means every employer engaged in any business or enterprise in this City, other than the government of the State of Maryland, or of the Mayor and City Council of Baltimore.

(City Code, 1966, art. 19, §48(a); 1976/83, art. 19, §55(a).) (Ord. 65-555.)

§ 11-2. Prohibited conduct.**(a) *In general.***

No employer shall demand or require any applicant for employment or prospective employment or any employee to submit to take a polygraph, lie detector, or similar test or examination as a condition of employment or continued employment.

(b) *Exception for governmental entities.*

The prohibition of this section does not apply to the federal government or local subdivision thereof, including the Mayor and City Council of Baltimore.

(City Code, 1966, art. 19, §48(b); 1976/83, art. 19, §55(b).) (Ord. 65-555.)

§ 11-3. Penalties.

Any employer who violates the provisions of this subtitle shall be guilty of a misdemeanor and subject to a fine not to exceed \$500.

(City Code, 1966, art. 19, §48(c); 1976/83, art. 19, §55(c).) (Ord. 65-555.)

**SUBTITLE 12
TEMPORARY HELP BUSINESSES**

§ 12-1. Construction of subtitle.

This subtitle shall not in any way be interpreted to interfere with the rights of an employer as guaranteed by the National Labor Relations Act as amended.
(City Code, 1976/83, art. 19, §189(2nd par.)) (Ord. 72-216.)

§ 12-2. Supplying labor during work stoppage or strike.

(a) Prohibited conduct.

It shall be unlawful for any person, partnership, agency, firm, or corporation, or officer or agent thereof, conducting a temporary help business which consists of directly employing individuals for the purpose of furnishing temporary full-time or part-time help to others, to knowingly supply persons to perform labor in place of an employee involved in an authorized strike or work stoppage after the inception of said strike or work stoppage.

(b) Exception for security or maintenance personnel.

Provided, however, this prohibition shall not apply to supplying security or maintenance personnel necessary for the protection and preservation of life, health, and property.
(City Code, 1976/83, art. 19, §189(1st par.)) (Ord. 72-216.)

§ 12-3. Penalties.

Any person, firm, or corporation violating this subtitle shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not to exceed \$500 or by imprisonment for a term of not more than 12 months, or both, at the discretion of the court.
(City Code, 1976/83, art. 19, §189(3rd par.)) (Ord. 72-216.)

SUBTITLE 13
LABOR PEACE AGREEMENTS FOR HOTEL PROJECTS

§ 13-1. Definitions.

(a) *In general.*

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

(b) *Contract.*

“Contract” includes, but is not limited to, a lease, management agreement, service agreement, loan, bond, guarantee, or other similar agreement to which the City is a party.

(c) *Employer.*

(1) “Employer” means any person who employs individuals at the site of a hotel development project.

(2) “Employer” does not include any person:

- (i) who employs fewer than the equivalent of 15 full-time or part-time employees at a hotel development project;
- (ii) who has entered into 1 or more agreements with 1 or more labor organizations regarding the employees at the hotel development project who are, or are likely to be, the subject of union organizing, if the City determines that the agreement provides protection from the risks of labor-management conflict that is at least equal to the protection provided by the minimum terms of a labor peace agreement; or
- (iii) whose ongoing economic performance and potential for labor-management conflict at the site will not, in the City’s determination, substantially affect the City’s proprietary interest in the hotel development project.

(d) *Labor organization.*

“Labor organization” means an organization, agency, or employee- representation committee or plan:

- (1) in which employees participate; and
- (2) that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(e) *{Repealed}*

Editor’s Note: For the standard definition of “person”, see City General Provisions Article, § 1-107. (Ord. 07-578; Ord. 22-125.)

§ 13-2. Findings and declarations.*(a) City's risks and liabilities.*

In the course of managing real property that it owns or otherwise in carrying out its functions in the public interest, the City participates in developments, as a property owner, lessor, proprietor, lender, or guarantor, facing similar risks and liabilities as those faced by other business entities that participate in these ventures.

(b) Proprietary interest requires prudent management.

In these situations, the City:

- (i) has an ongoing proprietary interest in the developments and a direct interest in their financial performance; and
- (ii) must make prudent management decisions, similar to any private business entity, to ensure efficient management of its business concerns and to maximize benefits and minimize risks.

(c) Risk of labor-management conflict.

- (1) One risk is the possibility of labor-management conflict.
- (2) A major potential outcome of labor-management conflict is economic action by labor organizations against employers. Experience of municipal and other investors demonstrates, for example, that organizing drives under formal and adversarial union certification processes often deteriorate into protracted and acrimonious labor-management conflict.
- (3) Labor-management conflict can:
 - (i) result in construction delays, work stoppages, picketing, strikes, consumer boycotts, and other forms of adverse economic pressure; and
 - (ii) adversely affect the City's financial or other proprietary business interest by causing delay in the completion of a project, by reducing the revenues or increasing the costs of the project, and by generating negative publicity.

(d) Risks heightened in hotel industry.

- (1) These risks are heightened in the hotel industry, because this industry is so closely related to tourism, which is a linchpin of the City's economy.
- (2) Labor-management conflict in hotel development projects in which the City is an economic participant can jeopardize the operation of related tourist and commercial facilities, as well as the City's national reputation as a tourist and convention destination.

(e) *Reducing risk through labor peace agreement.*

One way of reducing the risk to the City's proprietary interests is to require, as a condition of the City's investment or other economic participation in a hotel development project, that employers participating in the project seek agreements with labor organizations in which the labor organizations agree to forbear from adverse economic action against the employers' operations.

(Ord. 07-578.)

§ 13-3. Scope of subtitle.

This subtitle does not apply to:

- (1) a hotel development project for which the City determines that the risk to the City's financial or other nonregulatory interest resulting from labor-management conflict is so minimal or speculative as not to warrant concern for the City's investment or other nonregulatory interest; or
- (2) a hotel development project for which the City determines that its proprietary interest is less than \$100,000.

(Ord. 07-578.)

§ 13-4. Construction of subtitle.(a) *Union recognition.*

Nothing in this subtitle requires an employer to recognize a particular labor organization.

(b) *Collective bargaining agreement.*

Nothing in this subtitle requires an employer to enter into a collective bargaining agreement establishing the substantive terms and conditions of employment.

(c) *Labor policy.*

This subtitle is not intended, and may not be interpreted, to express any generally applicable policy regarding labor-management relations or to regulate those relations in any way.

(d) *Employee preference.*

This subtitle is not intended to favor any particular outcome in determining employee preference regarding union representation.

(Ord. 07-578.)

§ 13-5. {Reserved}

§ 13-6. Determining need for agreement.*(a) In general.*

For each hotel development project in which the City participates or has a financial interest, the City shall determine whether the City has a proprietary interest in the project.

Editor's Note: This subtitle was enacted by Ordinance 07-578, effective December 26, 2007. Section 4 of Ord. 07-578 provides that the subtitle "does not apply to any economic participation granted by the City before the effective date of this Ordinance".

(b) Governing criteria.

The City is deemed to have a proprietary interest in a hotel development project if the City determines that:

- (1) through a lease of real property that is owned by the City and used for the project, the City receives ongoing revenue, excluding government fees, tax revenue, assessment revenue, or similar fees and revenues, except for tax revenue under the circumstances specified in items (2) and (3) of this subsection;
- (2) ongoing revenues from the project, including incremental tax revenues generated by the project, are used to repay loans provided by the City to assist the development of the project;
- (3) ongoing revenues from the project, including incremental tax revenues generated by the project, are used to pay debt service on bonds provided by the City to assist the development of the project;
- (4) the City has significant assets at risk because it has agreed to underwrite or guarantee the development of the project or loans related to the project; or
- (5) the City has a significant ongoing economic and nonregulatory interest that is at risk in the project's financial success and is likely to be adversely affected by labor-management conflict, except that no interest is considered "economic and nonregulatory" if it arises from the exercise of regulatory or police powers, such as taxation (except as set forth in items (2) and (3) of this subsection), zoning, or the issuance of permits or licenses.

(Ord. 07-578.)

§ 13-7. Agreement required.*(a) "Economic participation" defined.*

In this section, "economic participation" means a lease, loan, financing, underwriting, guarantee, or other financial benefit described in § 13-6(b) of this subtitle.

(b) When City to require.

If the City determines that it has a proprietary interest in a hotel development project, then it shall require, as a condition of the City's economic participation, that each employer on the

project enter into 1 or more labor peace agreements with 1 or more labor organizations that represent, or seek to represent, workers on the project.

(c) *Default, etc., provisions.*

Any contract between the City and the beneficiary of the City's economic participation in a project may include provisions governing default, damages, or rescission that the City considers appropriate to assure that the requirements of this section are fully satisfied.

(Ord. 07-578.)

§ 13-8. Tenor and contents of agreement.

(a) *To be enforceable under LMRA.*

The labor peace agreement shall be a written agreement enforceable between the employer and the labor organization under § 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a).

(b) *Minimum contents.*

The labor peace agreement shall contain, at a minimum, a provision prohibiting the labor organization and its members from engaging in any picketing, work stoppage, boycott, or other economic interference with any of the employer's operations in which the City has a proprietary interest, for the duration of that interest.

(Ord. 07-578.)

§ 13-9. Violation of agreement by union.

An employer that performs its obligations under a labor peace agreement is relieved of further obligation under the agreement if the labor organization engages in adverse economic action such as striking, picketing, or boycotting the employer.

(Ord. 07-578.)

§§ 13-10 to 13-15 {Reserved}

§ 13-16. Notice of subtitle.

(a) *Notice required.*

A request for proposals, invitation to bid, or similar document issued by the City regarding a hotel development project must include a reference to and summary of this subtitle.

(b) *No exemption for omission.*

Failure to include a reference or summary in a document does not exempt an employer otherwise subject to the requirements of this subtitle.

(Ord. 07-578.)

**SUBTITLE 14
MANDATORY BICYCLE PARKING**

§ 14-1. Definitions.

(a) *In general.*

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

(b) *Bicycle.*

“Bicycle” has the meaning stated in § 11-104 {“Bicycle”} of the State Transportation Article.

(c) *Bicycle parking space.*

“Bicycle parking space” means a designated area, whether open or enclosed, that is used for the off-street parking of a bicycle.

(d) *Employer.*

“Employer” means any person who employs 10 or more full-time or part-time employees in the City of Baltimore.

(e) *{Repealed}*

Editor’s Note: For the standard definition of “person”, see City General Provisions Article, § 1-107. (Ord. 10-383; Ord. 22-125.)

§ 14-2. Rules and regulations.

Subject to Title 4 {“Administrative Procedure Act – Regulations”} of the City General Provisions Article, the Director of Transportation may adopt rules and regulations to implement this subtitle.

Editor’s Note: By authority of Ordinance 20-431, Section 5, the Director of Legislative Reference, in consultation with the Law Department, has conformed the text of this section to refer expressly to the requirements of the recently-enacted Administrative Procedure Act that, effective January 15, 2021, governs the proposal, adoption, and publication of administrative rules and regulations. (Ord. 10-383; Text Conformed 02/18/21.)

§§ 14-3 to 14-5. {Reserved}

§ 14-6. Required bicycle parking.

(a) *Scope.*

Bicycle parking spaces required by this subtitle are in addition to any parking spaces otherwise required by Title 16 {“Off-Street Parking and Loading”} of the Baltimore City Zoning Code.

(b) *General requirements.*

Every employer must provide its employees with the number of long-term and short-term parking spaces required by Baltimore City Zoning Code § 16-705 {"Required number of bicycle spaces"}.

(c) *Fractional spaces.*

When the application of this section results in a requirement for a fractional bicycle parking space:

(1) any fraction less than $\frac{1}{2}$ may be disregarded; and

(2) any fraction of $\frac{1}{2}$ or more counts as 1 bicycle parking space.

(Ord. 10-383; Ord. 15-581.)

§ 14-7. Specifications.

(a) *Size and capacity.*

(1) Each bicycle parking space must be:

(i) for an outdoor space, at least 4 feet by 6 feet; and

(ii) for an enclosed space, at least 15 square feet of open floor area.

(2) Each bicycle parking space must be equipped with a bicycle rack or locker that can accommodate up to 2 bicycles per rack or locker.

(b) *Additional requirements.*

Each bicycle parking space must be:

(1) provided in a safe and secure location that is accessible to all employees;

(2) located on the premises of the employer's place of business; and

(3) clearly labeled as reserved for bicycle parking by employees.

(Ord. 10-383.)

§§ 14-8 to 14-10. {Reserved}

§ 14-11. Penalties.

Any employer who violates a provision of this subtitle or of a rule or regulation adopted under this subtitle is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than \$500.

(Ord. 10-383.)

SUBTITLE 15. FAIR CRIMINAL-RECORD SCREENING PRACTICES

Editor’s Note: This subtitle was enacted by Ordinance 14-221, effective August 13, 2014. The Ordinance proposed to designate the new subtitle as Subtitle 14, comprising § 14-1 *et seq.* However, because this article already contains a Subtitle 14, with sections similarly numbered, the new subtitle is codified here as Subtitle 15, comprising §§ 15-1 through 15-16.

Part 1. Definitions; General Provisions

§ 15-1. Definitions.

(a) *In general.*

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

(b) *Applicant.*

“Applicant” means any individual who is being considered or who requests to be considered for employment in the City of Baltimore by a covered employer.

(c) *Conviction.*

(1) *In general.*

“Conviction” means any sentence arising from a verdict or plea of guilty or nolo contendere.

(2) *Inclusions.*

“Conviction” includes:

- (i) a sentence of incarceration or fine; and
- (ii) a suspended sentence.

(d) *Covered employer; Employer.*

“Covered employer” or “employer” means any person that employs 10 or more full-time equivalent employees in the City of Baltimore.

(e) *Employment.*

(1) *In general.*

“Employment” means:

- (i) any work for pay; and
- (ii) any form of vocational or educational training, with or without pay.

(2) *Inclusions.*

“Employment” includes:

- (i) contractual, temporary, seasonal, or contingent work; and
- (ii) work through the services of a temporary or other employment agency.

(f) *{Repealed}*

Editor’s Note: For the Code-wide standard definition of “includes” and “including”, see City General Provisions Article, § 1-105, .

(g) *Inquiry.*

“Inquiry” means any direct or indirect conduct intended to gather information, using any mode of communication.

(h) *{Repealed}*

Editor’s Note: For the Code-wide standard definition of “person”, see City General Provisions Article, § 1-107.

(*Ord. 14-221; Ord. 22-125.*)

§ 15-2. Findings; Intent and purpose.

(a) *Findings.*

The Mayor and City Council of Baltimore finds that:

- (1) individuals with criminal records suffer from pervasive discrimination in many fundamental areas of life, including employment, housing, education, and eligibility for many forms of social benefits;
- (2) nationwide, the percentage of people of color who have criminal records exceeds the percentage of their representation in the population as a whole, which disproportionately impacts their lives, families, and communities;
- (3) many individuals with criminal records are job seekers who are ready and able to become part of and to contribute to the work force;
- (4) lack of employment is a significant cause of recidivism, while individuals who are employed are significantly less likely to again engage in criminal activities;
- (5) artificial barriers to employment for people with criminal records are creating permanent members of an underclass that threatens the health of the community and undermines public safety;
- (6) the City of Baltimore, in its own employment practices, has implemented a system of screening for individuals with criminal records that is fair to all concerned; and

- (7) the City has a responsibility to ensure that private employers in the City similarly maintain fair policies for the screening and identification of individuals with criminal records.

(b) *Intent and purpose.*

It is the intent and purpose of this subtitle:

- (1) to assist the successful reintegration back into the community of individuals with criminal records, by removing artificial barriers to gainful employment;
- (2) to enhance the health and security of the community by assisting individuals with criminal records to lawfully provide for their families and themselves; and
- (3) to ensure that just and fair measures are implemented and practiced when pre-screening individuals to identify those who might or might not have criminal records.

(Ord. 14-221.)

§ 15-3. Interpretation.

(a) *In general.*

- (1) This subtitle shall be construed to promote a policy that gives an individual who has a criminal record, but otherwise meets all criteria for consideration for employment, an opportunity to be judged on his or her own merit when initially applying for employment.
- (2) This subtitle, however, may not be construed to require any employer to hire someone with a criminal record nor to limit an employer’s ability to choose the most qualified and appropriate applicant for the employment opportunity at hand.

(b) *Federal, State law on criminal records prevails.*

Nothing in this subtitle may be construed to modify or waive the requirements and limitations of any Federal or State law on access to or the use of criminal records.

(c) *{Repealed}*

Editor’s Note: For the new, Code-wide standard for severability, see City General Provisions Article, § 1-214. (Ord. 14-221; Ord. 22-125.)

§§ 15-4 to 15-5. {Reserved}

Part 2. Prohibited Conduct

§ 15-6. Preliminary inquiries into criminal record.

(a) *“Conditional offer” defined.*

In this section, “conditional offer” means an offer that is conditioned solely on:

- (1) the results of the employer's subsequent inquiring into or gathering information about the applicant's criminal record; or
- (2) some other contingency expressly communicated to the applicant at the time of the offer.

(b) *Inquiries prohibited before conditional offer.*

In connection with the proposed employment of any applicant, a covered employer may not, at any time before a conditional offer of employment has been extended:

- (1) require the applicant to disclose or reveal whether he or she has a criminal record or otherwise has had criminal accusations brought against her or him;
- (2) conduct a criminal-record check on the applicant; or
- (3) otherwise make any inquiry of the applicant or others about whether the applicant has a criminal record or otherwise has had criminal accusations brought against her or him.

(Ord. 14-221.)

§ 15-7. Exceptions.

(a) *Actions expressly required or authorized by other law.*

This Part 2 does not apply to any inquiry or other action that is required or expressly authorized by an applicable Federal, State, or City law or regulation.

(b) *Facilities servicing minors or vulnerable adults.*

(1) In this subsection, "vulnerable adult" means an adult who lacks the physical or mental capacity to provide for his or her own daily needs.

(2) This Part 2 does not apply to any facility or employer that provides programs, services, or direct care to minors or to vulnerable adults.

(Ord. 14-221.)

§§ 15-8 to 15-10. {Reserved}

Part 3. Administrative Enforcement; Penalties

§ 15-11. Complaint to Community Relations Commission.

(a) *Complaint authorized.*

(1) Any person aggrieved by an alleged violation of this subtitle may file a complaint with the Baltimore Community Relations Commission.

(2) The complaint shall be filed, investigated, and heard in the same manner as that provided in City Code Article 4 {"Community Relations"}, Subtitle 4 {"Enforcement"}, for alleged violations of that article's unlawful discriminatory employment practices.

(b) *Decision and order.*

In its decision and order, the Commission may award the aggrieved person:

- (1) back pay for lost wages caused by the violation of this subtitle;
- (2) reinstatement;
- (3) compensatory damages, which may include:
 - (i) compensation for humiliation, embarrassment, and emotional distress; and
 - (ii) expenses incurred in seeking other employment; and
- (4) reasonable attorney’s fees.

(Ord. 14-221.)

§ 15-12. Judicial and appellate review.

(a) *Judicial review.*

A party aggrieved by a final decision of the Community Relations Commission under this subtitle may seek judicial review of that decision by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure.

(b) *Appellate review.*

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 of Procedure.

(Ord. 14-221; Ord. 19-332.)

§ 15-13. Retaliation or discrimination prohibited.

A covered employer may not take or refuse to take a personnel action or otherwise retaliate or discriminate against any person as a reprisal for the person’s having claimed a violation of this subtitle.

(Ord. 14-221.)

§§ 15-14 to 15-15. {Reserved}

§ 15-16. Criminal penalties.

Any person who violates any provision of this subtitle is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than \$500 or imprisonment for not more than 90 days or both fine and imprisonment for each offense.

(Ord. 14-221.)

SUBTITLE 16
LACTATION ACCOMMODATIONS IN THE WORKPLACE

Editor's Note: This subtitle was enacted by Ordinance 18-213, effective March 13, 2019.

Part 1. Definitions; General Provisions

§ 16-1. Definitions.

(a) *In general.*

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

(b) *Community Relations Commission; Commission.*

“Community Relations Commission” or “Commission” means the Baltimore Community Relations Commission established by City Code Article 4 {“Community Relations”}, Subtitle 2 {“Community Relations Commission”}.

(c) *Employee.*

(1) *In general.*

“Employee” means, except as otherwise provided in this subsection, any individual who works in Baltimore City for an employer.

(2) *Exclusions.*

“Employee” does not include:

- (i) an individual engaged in the activities of an educational, charitable, religious, or other nonprofit organization where the services rendered to that organization are on a voluntary basis or in return for charitable aid conferred on the individual;
- (ii) an individual who is employed by his or her parent, spouse, or child; or
- (iii) an individual who is employed as a domestic within a private residence.

(d) *Employer.*

(1) *In general.*

“Employer” means, except as otherwise provided in this subsection, any person who employs 2 or more full-time equivalent employees working in the City of Baltimore.

(2) *Exclusions.*

“Employer” does not include the federal government, the State government, or any instrumentality or unit of either.

(e) *Lactation accommodation.*

“Lactation accommodation” means both lactation break and lactation location.

(f) *Lactation break.*

“Lactation break” means the break time that an employer is required by this subtitle to provide an employee for purposes of expressing breast milk.

(g) *Lactation location.*

“Lactation location” means the space, room, or location that an employer is required by this subtitle to provide an employee for purposes of expressing breast milk.

(h) *Person.*

(1) *In general.*

“Person” has the meaning stated in § 1-107(a) {“Person: In general”} of the City Code’s General Provisions Article.

(2) *Qualified inclusion of City governmental units.*

Notwithstanding § 1-107(b) {“Person: Exclusion”} of the General Provisions Article, in this subtitle “person” also includes, except as used in § 16-30 {“Criminal penalties”} of this subtitle, any department, board, commission, council, authority, committee, office, or other unit of City government.

(Ord. 18-213; Ord. 22-125.)

§ 16-2. {Repealed by Ord. 22-125}

Editor’s Note: For the Code-wide standard uses of *mandatory terms* (“must” and “shall”), *prohibitory terms* (“may not”, “must not”, and “no ... may”), and *permissive terms* (“may”), see City General Provisions Article, § 1-104.

§ 16-3. {Reserved}

§ 16-4. Rules and regulations.

Subject to Title 4 {“Administrative Procedure Act – Regulations”} of the City General Provisions Article, the Community Relations Commission must adopt rules and regulations to carry out this subtitle.

Editor’s Note: By authority of Ordinance 20-431, Section 5, the Director of Legislative Reference, in consultation with the Law Department, has conformed the text of this section to refer expressly to the requirements of the recently-enacted Administrative Procedure Act that, effective January 15, 2021, governs the proposal, adoption, and publication of administrative rules and regulations.

(Ord. 18-213; Text Conformed 02/18/21.)

§§ 16-5 to 16-9. {Reserved}

Part 2. Required Accommodations**§ 16-10. Lactation breaks.**(a) *In general.*

An employer must provide a reasonable amount of break time to accommodate an employee who desires to express breast milk.

(b) *When and how provided.*

(1) If possible, the break time required by this section must run concurrently with any paid rest or break time already required by law or otherwise authorized for the employee.

(2) Break time required by this section that does not run concurrently with paid rest or break time required by law or otherwise authorized for the employee may be unpaid.

(Ord. 18-213.)

§ 16-11. Lactation location – In general.(a) *“Close proximity ...” defined.*

In this section, “close proximity to the employee’s work area” means no more than 500 feet and two adjacent floors from the furthest employee work area being served.

(b) *In general.*

(1) An employer must provide a lactation location, other than a bathroom or a closet, that:

(i) is in close proximity to the employee’s work area; and

(ii) shields its occupants from view and from intrusion by coworkers or others.

(2) The lactation location may include the place where the employee normally works if it otherwise meets the requirements of this Part 2.

(c) *Specifications.*

The lactation location must:

(1) be safe, clean, and free of toxic or hazardous materials;

(2) limit access to it by a door that can be locked from the inside; and

(3) contain:

(i) a surface (e.g., a table or shelf) on which to place a breast pump and other personal items;

- (ii) a place to sit;
- (iii) at least one electrical outlet; and
- (iv) unless elsewhere provided by the employer in close proximity to the employee’s work area:
 - (A) a sink with running hot and cold water; and
 - (B) a refrigerator in which the employee can store breast milk.

(Ord. 18-213.)

§ 16-12. Lactation location – Multi-purpose locations.

An employer may provide a lactation location that is also used for other purposes, but only as long as:

- (1) throughout the period of any employee’s need to express milk, the primary function of the location is its use as a lactation location;
- (2) during that period, the location’s use for lactation takes precedence over all other functions and uses; and
- (3) the employer provides notice to all employees who might otherwise need to use that location for other purposes, that:
 - (i) the location’s primary function is its use as a “Lactation Location”; and
 - (ii) this primary function takes precedence over all other functions and uses.

(Ord. 18-213.)

§ 16-13. Lactation location – Multi-tenant building.

If an employer’s workspace is inadequate to satisfy the requirements of this Part 2 and other employers are located in the same building, the employer may fulfill the requirements of this Part 2 by providing a lactation location that:

- (1) is shared by 2 or more employers in the building;
- (2) complies with § 16-11 {“Lactation location – In general”} and § 16-12 {“Lactation location – Multi-purpose locations”} of this Part 2; and
- (3) is sufficient to accommodate the number of employees who might desire to use it at any given time.

(Ord. 18-213.)

§ 16-14. Waiver or variance for undue hardship.*(a) In general.*

In accordance with the rules and regulations adopted under § 16-4 {"Rules and regulations"} of this subtitle, an employer may apply to the Community Relations Commission for a waiver or variance of any requirement of this Part 2 that the employer can demonstrate would impose an undue hardship by causing significant expense or operational difficulty when considered in relation to the size, financial resources, nature, or structure of the employer's business.

(b) Temporary lactation location as a variance.

- (1) An employer may apply to the Community Relations Commission to designate a space within a room as a temporary lactation location, in place of a permanent lactation location, or a room that is a multipurpose lactation location if an employer can demonstrate that a permanent lactation location or a room that is a multipurpose lactation location would impose an undue hardship by causing significant expense or operational difficulty for the employer. A temporary lactation location could be created using screening or curtains.
- (2) The means by which the temporary lactation location is created (e.g., the curtain), and the items contained therein (e.g., the chair, table or shelf, etc.) should not be modified during the duration of an employee's need to express milk. While an employee expresses milk, the lactation location should be free from intrusion by other persons by means of a latch or other closure mechanism. The temporary lactation space should have signage visible to other employees designating the area as a lactation location for the duration of an employee's need to express milk. The employer should provide notice to employees of the existence and purpose of the temporary lactation location and that it should not be disturbed.

(c) Rules and regulations.

The Commission's rules and regulations must include:

- (1) the criteria for establishing an undue hardship as described in subsection (a) of this section;
- (2) the procedures, forms, and documentation required to apply for the waiver or variance; and
- (3) the procedures for the Commission's hearing on and consideration of the application.

(Ord. 18-213.)

§§ 16-15 to 16-19. {Reserved}

Part 3. Employer Policy and Process; Records

§ 16-20. Employer policy and process.

(a) *In general.*

Each employer subject to this subtitle must develop and implement a written lactation accommodation policy.

(b) *Minimum contents.*

The written policy must:

- (1) contain a statement that employees have a legal right to request a lactation accommodation;
- (2) include the employer's process for requesting a lactation accommodation, which process must, at a minimum:
 - (i) specify the means by which an employee must submit the request to the employer;
 - (ii) require the employer to respond to the request within 5 business days; and
 - (iii) require the employer and employee to engage in an interactive process to determine lactation break periods and a lactation location appropriate for the employee;
- (3) state that, whenever the employer does not provide lactation breaks or a lactation location, or provides a lactation location that does not fully comply with Part 2 of this subtitle, or asserts any waiver or variance granted under § 16-14 {"Waiver or variance for undue hardship"} of this subtitle, the employer will be required to describe, in a written response to the request, the specific bases on which the employer has done so;
- (4) state that any employee aggrieved by an alleged violation of this subtitle may file a complaint with the Baltimore Community Relations Commission; and
- (5) state that retaliation against an employee for exercising the rights conferred by this subtitle is prohibited.

(c) *Employer to keep copies of all responses.*

The employer must retain, in accordance with § 16-21 {"Employer records"} of this subtitle, a copy of all written responses made under the policy required by subsection (b)(3) of this section.

(d) *Distribution of policy.*

- (1) The employer must distribute a copy of the employer's lactation accommodation policy to all employees:

(i) upon their hiring; and

(ii) again, within 10 calendar days of any modification to the policy.

(2) The employer must also offer a copy of the lactation accommodation policy to any employee who requests or inquires about pregnancy or parental leave.

(3) If the employer has an employee handbook or set of policies that is available to employees, the lactation accommodation policy must be included in that handbook or set of policies.

(Ord. 18-213.)

§ 16-21. Employer records.

(a) *In general.*

Each employer subject to this subtitle must maintain a record of all requests for a lactation accommodation received by the employer.

(b) *Required contents.*

The record must include the following documentation:

(1) the name of the employee;

(2) the date of the initial request and of any update to the initial request;

(3) a copy of all written or digital correspondence by or on behalf of the employee and employer; and

(4) a description of how the employer resolved the request.

(c) *Retention period; Inspection.*

The employer must:

(1) retain the record and documentation required by this section for a period of 3 years from the date of the request for lactation accommodation; and

(2) allow the Community Relations Commission access to that record, subject to reasonable notice, to monitor compliance with the requirements of this subtitle.

(d) *Affect of failure to comply.*

In any matter involving an alleged violation of this subtitle, if the employer has failed to maintain or retain the record and documentation required by this section, or does not allow the Commission reasonable access to them, it will be presumed that the employer has violated this subtitle, absent clear and convincing evidence otherwise.

(Ord. 18-213.)

§§ 16-22 to 16-24. {Reserved}

Part 4. Administrative Enforcement

§ 16-25. Complaint to Community Relations Commission.

(a) *Complaint authorized.*

Any person aggrieved by an alleged violation of this subtitle may file a complaint with the Baltimore Community Relations Commission.

(b) *Process.*

The complaint shall be filed, investigated, and heard in the same manner as that provided in City Code Article 4 {"Community Relations"}, Subtitle 4 {"Enforcement"}, for alleged violations of that article’s unlawful discriminatory employment practices.

(Ord. 18-213.)

§ 16-26. Judicial and appellate review.

(a) *Judicial review.*

A party aggrieved by a final decision of the Community Relations Commission under this subtitle may seek judicial review of that decision by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure.

(b) *Appellate review.*

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 of Procedure.

(Ord. 18-213; Ord. 19-332.)

§ 16-27. {Reserved}

Part 5. Prohibited Conduct; Criminal Penalties

§ 16-28. Retaliation or discrimination prohibited.

No employer or other person may take or refuse to take a personnel action or otherwise retaliate or discriminate against any person as a reprisal for that person’s having alleged a violation of this subtitle or otherwise having exercised a right granted by this subtitle.

(Ord. 18-213.)

§ 16-29. {Reserved}

§ 16-30. Criminal penalties.

Any person who violates any provision of this subtitle or of a rule or regulation adopted under this subtitle is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than \$500 for each offense.

(Ord. 18-213.)

SUBTITLE 17
RETALIATION FOR HUMAN TRAFFICKING REPORTS

§ 17-1. Definitions.(a) *In general.*

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

(b) *Covered employer.*

“Covered employer” means any person that employs 5 or more full-time equivalent employees in the City of Baltimore.

(c) *Human trafficking.*

“Human trafficking” means:

- (1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform a commercial sex act has not attained 18 years of age; or
- (2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(d) *{Repealed}*

Editor’s Note: For the Code-wide standard definition of “person”, see City General Provisions Article, § 1-107. (*Ord. 15-359; Ord. 16-503; Ord. 22-125.*)

§ 17-2. {Reserved}**§ 17-3. Retaliation or discrimination prohibited.**

A covered employer may not take or refuse to take a personnel action or otherwise retaliate or discriminate against any person as a reprisal for the person’s having made a good-faith report of a suspected act of human trafficking to that person’s employer or any appropriate agency.

(*Ord. 15-359.*)

§§ 17-4 to 17-5. {Reserved}**§ 17-6. Criminal penalties.**

Any person who violates any provision of this subtitle is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than \$1,000 or imprisonment for not more than 90 days or both fine and imprisonment for each offense.

(*Ord. 15-359.*)

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SUBTITLE 18
DISPLACED SERVICE WORKERS PROTECTION

§ 18-1. Definitions.

(a) *In general.*

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

(b) *Affected employee.*

“Affected employee” means a service employee performing work for an entity that is being, or has been, terminated as a service provider and is being replaced with a successor entity performing similar services at the same site.

(c) *Awarding authority.*

(1) *In general.*

“Awarding authority” means any person that awards or enters into a service contract or subcontract with a contractor to be performed in the City.

(2) *Inclusion of City, other governmental units.*

“Awarding authority” includes the City of Baltimore and any governmental unit, agency, or other entity as to which the City has the power to legislate.

(d) *Contractor.*

“Contractor” means any person, including a subcontractor, that:

- (1) enters into a service contract to perform work in the City; and
- (2) employs more than 20 employees.

(e) *Commission.*

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

(f) *{Repealed}*

Editor’s Note: For the Code-wide standard definition of “person”, see City General Provisions Article, § 1-107.

(g) *Service contract.*

“Service contract” means a contract between an awarding authority and a contractor to provide security, janitorial, building maintenance, or food preparation in a facility located in the City that is used as a:

- (1) private elementary or secondary school;
- (2) public or private college or university;
- (3) convention, sports, or entertainment institution, such as a museum, casino, convention center, arena, stadium, or music hall;
- (4) multi-family residential building or complex with more than 30 units;
- (5) commercial building or office building occupying more than 50,000 square feet;
- (6) industrial facility, such as a pharmaceutical laboratory, research and development facility, or product fabrication facility; or
- (7) distribution center.

(h) *Service employee.*

(1) “Service employee” means an individual employed on a full- or part-time basis as a:

- (i) building service employee, including a janitor, security officer, groundskeeper, concierge, door staffer, maintenance technician, handyman, superintendent, elevator operator, window cleaner, or building engineer; or
- (ii) food service worker, including a cafeteria attendant, line attendant, cook, butcher, baker, server, cashier, catering worker, dining attendant, dishwasher, or merchandise vendor.

(2) “Service employee” does not include:

- (i) a managerial or confidential employee; or
- (ii) an employee who works in an executive, administrative, or professional capacity.

(i) *Successor entity.*

“Successor entity” means an entity that:

- (1) is awarded a service contract to provide, in whole or in part, services that are substantially similar to those provided to the awarding authority at any time during the previous 90 days;
- (2) has purchased or acquired control of a property located in the City where service employees were employed at any time during the previous 90 days; or
- (3) terminates a service contract and, within 90 days of the termination, hires service employees as its direct employees to perform services that are substantially similar to those provided under the terminated service contract.

(Ord. 17-028; Ord. 22-125.)

§ 18-2. Rules and regulations.

Subject to Title 4 {"Administrative Procedure Act – Regulations"} of the City General Provisions Article, the Commission may adopt rules and regulations to implement this subtitle.

Editor’s Note: By authority of Ordinance 20-431, Section 5, the Director of Legislative Reference, in consultation with the Law Department, has conformed the text of this section to refer expressly to the requirements of the recently-enacted Administrative Procedure Act that, effective January 15, 2021, governs the proposal, adoption, and publication of administrative rules and regulations.

(Ord. 17-028; Text Conformed 02/18/21.)

§ 18-3. Transition employment period.**(a) Awarding authority responsibilities.**

At least 15 days before a service contract is terminated, an awarding authority must:

- (1) request that the terminated contractor provide the awarding authority a complete list of the name, date of hire, and job classification of each affected employee;
- (2) give the successor entity a complete list of the name, date of hire, and job classification of each affected employee; and
- (3) except in the case of a service contract at a facility used as a public university, ensure that a written notice to all affected employees describing the pending termination of the service contract and the employee rights provided by this subtitle is conspicuously posted at any affected work site.

(b) Successor entity responsibilities.

- (1) Subject to paragraph (3) of this subsection, the successor entity must offer to retain, and, if the offer is accepted, actually retain, each affected employee at an affected site for 90 days or until the successor entity no longer provides services at the covered location, whichever is earlier.
- (2) No less than 10 days before it commences work at an affected site, the successor entity must give each affected employee a written offer of employment for the 90-day transition period and send a copy to the employee’s collective bargaining representative, if any. Each offer must:
 - (i) allow the employee at least 10 days after receiving the notice to accept the offer; and
 - (ii) state the date by which the affected employee must accept the offer.
- (3) A successor entity may retain less than all of the affected employees during the 90-day transition period if the successor entity:
 - (i) finds that fewer service employees are required to perform the work than the terminated contractor had employed;

- (ii) retains service employees by seniority within each job classification;
- (iii) maintains a preferential hiring list of those employees not retained; and
- (iv) hires any additional service employees from the list, in order of seniority, until all affected service employees have been offered employment.

(4) At the end of the 90-day transition employment period, the successor entity must perform a written performance evaluation for each employee retained pursuant to this section. If the employee’s performance during the 90-day transition employment period is satisfactory, the successor entity must offer the employee continued employment under the terms and conditions established by the successor entity.

(5) During the 90-day transition period, the successor entity may not discharge a service employee retained under this section without just cause.

(Ord. 17-028.)

§ 18-4. {Reserved}

§ 18-5. Subtitle not bar to contract termination.

This subtitle does not limit the ability of an awarding authority to terminate a service contract or replace a contractor with another contractor.

(Ord. 17-028.)

§ 18-6. Retaliation against employees prohibited.

(a) *In general.*

An 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 § 18-7 {“Enforcement procedures”}, order appropriate restitution or the reinstatement of the employee with backpay to the date of the violation.

(Ord. 17-028.)

§ 18-7. 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 may, acting on its own initiative and without any complaint from an employee, file a complaint against an employer whenever the Commission has reasonable cause to believe that the 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 order of the court may be punished by the court as contempt thereof.

(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 affected employees to their former positions under the conditions required by §18-3(b) {"Transition employment period: Successor entity responsibilities"} of this subtitle; and
 - (iii) pay any affected employees all wages and other compensation owed for the period of time that they were unlawfully terminated, as provided in §18-8 {"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 the service employee or employees wrongfully terminated in violation of §18-3(b) {"Transition employment period: Successor entity responsibilities"} of this subtitle;

(ii) require the respondent to pay each service employee wrongfully terminated in violation of §18-3(b) {"Transition employment period: Successor entity responsibilities"} of this subtitle his or her lost wages and other compensation to the date of the violation, as provided in §18-8 {"Penalties and fines"} of this subtitle; and

(iii) direct the cessation of all practices by the respondent which 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) A respondent aggrieved by an order of the Commission under this subtitle may seek judicial review of that order by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure.

(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 of Procedure.

(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.

(Ord. 17-028; Ord. 19-332.)

§ 18-8. Penalties and fines.

(a) *In general.*

The Commission may order any contractor or successor entity who commits a violation of this subtitle to:

(1) pay to the employee or employees impacted the wages and other compensation lost as a result of the contractor's violation of §18-3, with interest computed at 10% per annum on wages and other monetary compensation due; and

- (2) reinstate an employee or employees under the conditions required by §18-3(b) {"Transition employment period: Successor entity responsibilities"} of this subtitle.

(b) *Fines.*

- (1) Any successor entity that violates this subtitle shall forfeit and pay to the City of Baltimore a 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.
(*Ord. 17-028.*)

§ 18-9. {Repealed by Ord. 22-125}

Note: For the new, Code-wide standard for severability, *see* City General Provisions Article, § 1-214.

SUBTITLE 19
COVID-19 EMPLOYEE RETENTION

Editor’s Note: This subtitle was enacted by Ordinance 20-479, effective December 7, 2020. Section 3 of Ord. 20-479 further provides that

“[The subtitle] will remain effective through December 31, 2022; 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.”

§ 19-1. Definitions.

(a) *In general.*

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

(b) *Business.*

“Business” means a person who is 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) *Commission.*

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

(e) *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.

(f) *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.

(g) *Incumbent business employer.*

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

(h) *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.

(i) *{Repealed}*

Editor’s Note: For the Code-wide standard definition of “person”, see City General Provisions Article, § 1-107.

(j) *Successor business employer.*

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

(k) *Transfer document.*

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

(Ord. 20-479.)

§ 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.

(Ord. 20-479.)

§ 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.

(Ord. 20-470.)

§ 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.

(Ord. 20-479.)

§ 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"} 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"} 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.

(Ord. 20-479.)

§ 19-10. Penalties.*(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.

(Ord. 20-479.)

§ 19-11. Collective bargaining agreements.

Any or all of the provisions of this subtitle may be waived in a bona fide collective bargaining agreement, but only if the waiver is expressly set forth in clear and unmistakable terms.

(Ord. 20-479.)

§ 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.

(Ord. 20-479.)

§ 19-13. Rules and regulations.

Subject to Title 4 {“Administrative Procedure Act – Regulations”} of the City General Provisions Article, the Commission may adopt rules and regulations to implement this subtitle.

Editor’s Note: By authority of Ordinance 20-431, Section 5, the Director of Legislative Reference, in consultation with the Law Department, has conformed the text of this section to refer expressly to the requirements of the recently-enacted Administrative Procedure Act that, effective January 15, 2021, governs the proposal, adoption, and publication of administrative rules and regulations.

(Ord. 20-479; Text Conformed 02/18/21.)

§ 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.

(Ord. 20-479.)

§ 19-15. *{Repealed by Ord. 22-125}*

Editor’s Note: For the new, Code-wide standard for severability, *see* City General Provisions Article, § 1-214.

SUBTITLE 19A
COVID-19 LAID-OFF EMPLOYEES RIGHT OF RECALL

Editor’s Note: This subtitle was enacted by Ordinance 20-480, effective December 7, 2020. Section 3 of Ord. 20-480 further provides that

“[The subtitle] will remain effective through December 31, 2022; 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.”

§ 19A-1. Definitions.

(a) *In general.*

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

(b) *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.

(c) *Commission.*

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

(d) *Customary seasonal work.*

“Customary seasonal work” means work performed by an employee during approximately the same season of a calendar year, such as summer or winter.

(e) *Employer.*

(1) *In general.*

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

- (i) a commercial property employer;
- (ii) an event center employer; or
- (iii) a hotel employer.

(2) *Exclusion.*

“Employer” does not include a hospital as defined in State Health-General Article, § 19-301 {“Definitions: Hospital”}.

(f) *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.*

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

(ii) An “event center employer” also includes any contracted, leased, or sublet premises connected to or operated in conjunction with the event center’s purpose, such as food preparation facilities, concessions, retail stores, restaurants, bars, and structured parking facilities.

(3) *Exclusion.*

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

(g) *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 employer’s premises.

(h) *Laid-off employee.*(1) *In general.*

“Laid-off employee” means an individual:

- (i) 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;
- (ii) who performed, in a particular workweek, at least 2 hours of work within Baltimore City for that employer; and
- (iii) whose most recent separation from that employer from active service or failure to be scheduled for customary seasonal work occurred on or after March 5, 2020, as a result of a lack of business, a reduction in workforce, or any other economic and non-disciplinary reason.

(2) *Presumption regarding terminations after March 5, 2020.*

There is a rebuttable presumption of fact that any termination occurring on or after March 5, 2020, was due to a non-disciplinary reason.

(3) *Exclusions.*

“Laid-off employee” does not include any individual who was, prior to his or her separation, a managerial, supervisory, or confidential employee.

(4) *Limitation.*

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

(i) *Length of service.*

“Length of service” means the aggregate total period of time during which a laid-off employee had been in active service to an employer, including periods of time when the laid-off employee was on leave or on vacation.

(j) *{Repealed}*

Editor’s Note: For the Code-wide standard definition of “person”, see City General Provisions Article, § 1-107. (Ord. 20-480; Ord. 22-125.)

§ 19A-2. {Reserved}

§ 19A-3. Right of recall.

(a) In general.

An employer shall make an offer to a laid-off employee for any position which is or becomes available for which the laid-off employee is qualified as described in subsection (b) of this section.

(b) Implementation.

(1) In general.

A laid-off employee is qualified and must be offered a position with the employer under this section if the laid-off employee:

- (i)* held the same or similar position at the same site of employment at the time of the laid-off employee's most recent separation from active service with the employer; or
- (ii)* has prior experience within the position or has the same skills required by the position and would not require additional training.

(2) Priority.

If more than 1 laid-off employee is entitled to preference for a position, the employer shall:

- (i)* first offer the position, in order of seniority by length of service, to those laid-off employees described in paragraph (1)(i) of this subsection; and
- (ii)* then offer the position, in order of seniority by length of service, to those laid-off employees described in paragraph (1)(ii) of this subsection.

(3) Multiple offers.

An employer may make simultaneous, conditional offers of employment to multiple laid-off employees, with any final offers of employment conditioned on application of the priority set forth in subsection (b)(2) of this subtitle.

(4) Acceptance of offer.

A laid-off employee who is offered a position under this section shall be given at least 5 business days in which to accept or decline the final offer.

(Ord. 20-480.)

§ 19A-4. {Reserved}

§ 19A-5. Retaliation prohibited.*(a) In general.*

An 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 § 19A-7 {"Enforcement procedures"} of subtitle, order appropriate restitution or the reinstatement of the employee with backpay to the date of the violation.

(Ord. 20-480.)

§ 19A-6. {Reserved}**§ 19A-7. 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 a laid-off employee, may itself file a complaint against an employer whenever the Commission has reasonable cause to believe that the 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 laid-off employees to their former positions as required by § 19A-3 {"Right of recall"} of this subtitle; and
 - (iii) order payment to laid-off employees of all wages and other compensation owed for the period of time that the employer was in violation of this subtitle, as provided in § 19A-8 {"Penalties"} 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 a laid-off employee or employees wrongfully terminated in violation of § 19A-3 {"Right of recall"} of this subtitle;
 - (ii) require the respondent to pay each employee aggrieved in violation of § 19A-3 {"Right of recall"} of this subtitle his or her lost wages and other compensation to the date of the violation, as provided in § 19A-8 {"Penalties"} 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.

(Ord. 20-480.)

§ 19A-8. Penalties.

(a) *In general.*

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

- (1) pay to any aggrieved laid-off employee or employees the wages and other compensation lost as a result of the employer’s violation of § 19A-3 {“Right of recall”}, with interest computed at 10% per annum on wages and other monetary compensation due; and
- (2) reinstate any laid-off employee or employees under the conditions required by § 19A-3 {“Right of recall”} of this subtitle.

(b) *Fines.*

- (1) Any 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.

(Ord. 20-480.)

§ 19A-9. Collective bargaining agreements.

Any or all of the provisions of this subtitle may be waived in a bona fide collective bargaining agreement, but only if the waiver is expressly set forth in clear and unmistakable terms.

(Ord. 20-480.)

§ 19A-10. Waiver of subtitle prohibited.*(a) In general.*

Except as provided in § 19A-9 {“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 employer to an employee to waive his or her rights under this subtitle is a violation of this subtitle.

(Ord. 20-480.)

§ 19A-11. Rules and regulations.

Subject to Title 4 {“Administrative Procedure Act – Regulations”} of the City General Provisions Article, the Commission may adopt rules and regulations to implement this subtitle.

Editor’s Note: By authority of Ordinance 20-431, Section 5, the Director of Legislative Reference, in consultation with the Law Department, has conformed the text of this section to refer expressly to the requirements of the recently-enacted Administrative Procedure Act that, effective January 15, 2021, governs the proposal, adoption, and publication of administrative rules and regulations.

(Ord. 20-480; Text Conformed 02/18/21.)

§ 19A-12. 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’ stability of employment;
- (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.

(Ord. 20-480.)

§ 19A-13. {Repealed by Ord. 22-125}

Editor’s Note: For the new, Code-wide standard for severability, *see* City General Provisions Article, § 1-214.