

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) *Person.*

“Person” means:

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

(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.)

§ 18-2. Rules and regulations.

(a) Commission to adopt.

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

(b) Filing with Legislative Reference.

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

(Ord. 17-028.)

§ 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 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.)

§ 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. Severability.

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

(Ord. 17-028.)