COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 7-186

"D.C. Occupational Safety and Health Act of 1988".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 7-28 on first and second readings, September 27, 1988, and October 11, 1988, respectively. This legislation was deemed approved without the signature of the Mayor on November 2, 1988, pursuant to Section 404(e) of the Act", and was assigned Act No. 7-245, published in the November 25, 1988, edition of the D.C. Register, (Vol. 35 page 8250) and transmitted to Congress on January 23, 1989 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 7-186, effective March 16, 1989.

DAVID A. CLARKE
Chairman to the Council

Dates Counted During the 30-day Congressional Review Period:

January 24,25,26,27,30,31

February 1,2,3,6,7,8,9,21,22,23,24,27,28

March 1,2,3,6,7,8,9,10,13,14,15

D.C. LAW 7 - 186

EFFECTIVE DATE MAR 16 1989

Enrolled Original

AN ACT

D.C. ACT 7 - 245

Codification, New Chapter 12 of title 36, District of Columbia Code (1989 Supp.)

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOV 02 1988

To enact an occupational safety and health law in the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Occupational Safety and Health Act of 1988".

Sec. 2. Definitions. New, Secti 36-12

For the purposes of this act, the term:

(1) "Authorized employee representative" means a person or persons selected and authorized by the employee or employees of a workplace to assist or represent the employee or employees in exercising their rights under the provisions of this act.

(2) "Board" means the District of Columbia Occupational Safety and Health Board established by section 6.

(3) "Commission" means the District of Columbia Occupational Safety and Health Commission established by section 7.

(4) "District" means the District of Columbia.

(5) "Employee" means an individual working for an employer for a salary, wage, or other compensation or pursuant to any other contractual obligation, but does not include domestic servants.

(6) "Employer" means any person, firm, corporation, partnership, stock association, agent, manager, representative, foreman, or any other person having control or custody of any place of employment or of any employee. The term "employer" shall include a District government or quasi-governmental agency and an entity established pursuant to interstate compact. The term "employer" shall not include the United States government or its agencies.

(7) "Federal Act" means the Occupational Safety and Health Act of 1970, approved December 29, 1970 (84 Stat. 1590; 29 U.S.C. 651 et seq.).

(8) "Inspection" means an examination of a workplace on a routine basis.

(9) "Investigation" means an examination of a specific hazard, accident, injury, or death.

(10) "Plan" means the occupational safety and health plan for the District provided for in section 5.

(11) "Secretary" means the Secretary of the United States Department of Labor.

(12) "Standard" means an occupational safety and health standard that requires conditions or the adoption or use of 1 or more practices, means, methods, operations, or processes that are reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

Sec. 3. Applicability to employment in workplaces. New, Sectio 36-120

(a) Except as otherwise provided in this section, this act shall apply to employment performed in any workplace in the District.

(b) This act shall not apply to the premises of an establishment of the United States government unless the physical premises are controlled by an independent contractor.

(c) Nothing in this act shall apply to working conditions of employees whose occupational safety and health is protected by the Atomic Energy Act of 1954, approved August 30, 1954 (68 Stat. 919; 42 U.S.C. 2011 et seq.), or with respect to which the United States government exercises exclusive jurisdiction for purposes of occupational safety and health.

Sec. 4. Duties of employer and employees. New, Sectio 36-120

(a) Each employer shall:

(1) Furnish employees with a place and conditions of employment that are free from recognized hazards that may cause or are likely to cause death or serious physical harm or illness to the employees; and

(2) Comply with all occupational safety and health rules promulgated and orders issued pursuant to this act.

(b) Each employee shall comply with all occupational safety and health rules promulgated and orders issued pursuant to this act which are applicable to the actions and conduct of the employee.

Sec. 5. Occupational safety and health plan. New, Sectic 36-120

Within 1 year from the effective date of this act and pursuant to section 18 of the Federal Act, the Mayor shall adopt and submit to the Secretary an occupational safety and health plan. The plan shall be consistent with the

provisions of this act and shall be at least as effective in ensuring safety and healthful workplaces and conditions of employment as the agreements, contracts, standards, rules and regulations made or promulgated pursuant to the Federal Act.

Sec. 6. District of Columbia Occupational Safety and Health Board.

(a) There is established within the executive branch of the District, a District of Columbia Occupational Safety and Health Board. The Board shall be composed of 7 members appointed by the Mayor, with the advice and consent of the Council from among those residents of the District who by reason of training, education, or experience are qualified to carry out the functions of the Board.

(b) The Board shall:

(1) Promulgate occupational safety and health standards in accordance with section 9;

(2) Determine variances in accordance with sections 11 and 12; and

(3) Adopt rules of procedure to govern its orderly operation and the orderly operation of the Commission in accordance with the title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code, sec. 1-1501 et seq.) ("APA").

(c) Except as provided in subsection (d) of this section, each member of the Board shall be appointed for a term of 3 years.

(d)(1) The Mayor shall designate a Chairperson of the Board to serve for a term of 3 years.

(2) Two persons shall be appointed from the private sector to represent management, 1 for an initial term of 3 years and 1 for an initial term of 1 year.

(3) Two persons shall be appointed from the private sector to represent labor, 1 for an initial term of 3 years and 1 for an initial term of 1 year.

(4) One person shall be appointed from the public management sector to represent management for an initial term of 2 years.

(5) One person shall be appointed from the public labor sector to represent labor for an initial term of 2 years.

(e) The composition of the Board shall be representative of the working age population of the District in terms of race, ethnic origin, and sex.

(f) Whenever a vacancy on the Board occurs before the end of a term, the Mayor, with the advice and consent of the Council, shall appoint a person to complete the remainder of that term.

(g) The Mayor shall submit nominations to the Board to the Council within 60 days of the date of approval of the plan. The Board shall begin operation when a majority of the members are sworn in. A majority of the members shall constitute a quorum. A quorum is necessary to conduct the business of the Board.

New, Secti 36-12

(h) A member of the Board may continue to serve after the expiration of that member's term until a successor is appointed and sworn in to office.

(i) The Mayor may remove a member of the Board for incompetence, misconduct, or neglect of duty, after notice to the member.

Sec. 7. Occupational Safety and Health Commission.

New, Sectio 36-120

(a) There is established an Occupational Safety and Health Commission. The Chairperson of the Board or a designee of the Chairperson of the Board shall serve as Chairperson of the Commission. The Chairperson of the Board, 1 labor and 1 management Board member shall serve on the Commission. When the issue is related to employee health, the Commissioner of Public Health or his or her designee shall serve on the Commission as a non-voting member. Members of the Board, other than the Chairperson, shall serve on a rotation basis pursuant to rules established by the Board under section 6(b)(3).

(b) For purposes of carrying out the functions of the Commission, the Commission may operate in panels of 3 members each. Two members of the Commission shall constitute a quorum and any official decision or action shall be made only on the affirmative vote of at least 2 members.

(c) The Commission:

(1) May consider an appeal of any decision or order of the Mayor rendered pursuant to section 16 and may sustain, reverse, modify, or vacate the decision or order of the Mayor or remand the case to the Mayor for further proceedings; and

(2) Shall determine whether the prohibition against discharge or discrimination under section 18 has been violated, issue a decision and order on any violation of section 18 and order all appropriate relief, including rehiring or reinstating the employee to the former position of the employee with back pay.

(d) The Commission shall conduct proceedings in accordance with rules established by the Board pursuant to section 6(b)(3).

(e) Members of the Board and Commission shall be compensated at a rate to be established by the Mayor in accordance with section 1108 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978,

effective March 3, 1979 (D.C. Law 2-139; D.C. Code, sec. 1-612.12). No compensation shall be paid to members who are otherwise employed by the District government.

Sec. 8. Powers of administration and enforcement.

(a) Except as provided in sections 6, 7, and 18, the Mayor shall administer and enforce the provisions of this act and may, consistent with the provisions of this act, delegate any power or authority to a designee of the Mayor.

(b) The Mayor shall, pursuant to the APA (D.C. Code, sec. 1-1501 et seq.), issue rules to implement the provisions of this act.

(c) The Mayor shall provide consultative services for employers pursuant to rules promulgated by the Mayor.

(d) The Mayor shall, either directly or through grants or contracts:

(1) Conduct educational and training programs to ensure the availability of skilled manpower necessary to carry out the provisions of this act, including short-term training of present employees;

(2) Establish and conduct programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe and unhealthful conditions in workplaces subect to this act;

(3) Consult with employers, employees, and their respective organizations on the development and staffing of preventive programs; and

(4) Conduct research and undertake demonstrations relating to occupational safety and health matters.

(e) The Mayor shall, to the extent required by the Federal Act, submit reports to the Secretary of Labor in the form and including any information that the Secretary of Labor may require.

Sec. 9. Occupational safety and health standards.

(a) Whenever an occupational safety and health standard is in effect under section 4(b)(2) or section 6 of the Federal Act, the Board may adopt the standard as the applicable standard for the District by publishing the standard as a rule in accordance with the APA (D.C. Code, sec. 1-1501 et seq.).

(b) Whenever, in the discretion of the Board, it is necessary and proper to promulgate a standard pertaining to an occupational safety and health issue for which there is no established federal standard, or when the Board considers a rule that is different from, but at least as effective as a comparable federal standard and that is necessary to better effectuate the purposes of this act, the Board may promulgate, modify, or revoke the occupational safety and health standard in the following manner:

(1) The Board shall publish the proposed standard in the District of Columbia Register and afford interested persons, including employees or their representatives, a period of 30 days after publication of the standard in which to submit to the Board written comments. On or before the final day of the publication period, any interested person may file with the Board written objections to the proposed standard, stating the grounds for objection. The Board shall hold a public hearing upon any objection to a proposed standard and request for public hearing by publishing, within 30 days after the final day for filing objections, a notice in the District of Columbia Register specifying the time and place of the hearing.

(2) Within 60 days after the expiration of the period provided for the submission of written comments under paragraph (1) of this subsection or, if a hearing is held, within 60 days after completion of the hearing, the Board shall issue a rule promulgating, modifying, or revoking a safety or health standard or make a determination that a rule shall not be issued. The rule shall be published in accordance with the APA (D.C. Code, sec. 1-1501 et seq.). The rule may contain a provision delaying its effective date for a period of not more than 60 days to ensure that affected employers and employees are informed of the existence of the rule, its terms, and that affected employers have an opportunity to familiarize themselves and their employees with the existence and terms of the rule.

(3) Whenever practicable, a rule promulgated pursuant to this subsection shall be based upon consideration of the highest safety and health protection standards for the employee, the latest available scientific data in the field, the feasibility of the standards, and experience gained from implementing this and other health and safety laws. In promulgating a rule on toxic materials or harmful physical agents pursuant to this subsection, the Board shall promulgate a rule that most adequately assures, to the extent feasible on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity, even if the employee has regular exposure to the toxic materials or physical agent throughout the working life of the employee. Whenever practicable, the rule promulgated shall be expressed in terms of objective criteria and the performance desired.

(c) Any rule applicable to products distributed or used in interstate commerce shall be identical to the comparable federal standard, unless a variation from the federal standard is required by compelling local conditions and the variation does not unduly burden interstate commerce.

(d) Any rule promulgated by the Board pursuant to this act shall prescribe, wherever necessary, all means of informing employees of the hazards to which they are exposed, and require:

(1) Labels and other appropriate forms of warning to ensure that workers understand the nature of the hazards to which they are exposed and precautions for safe use and exposure;

(2) Suitable protective equipment where needed, but not as a substitute for appropriate control techniques;

(3) Suitable technological and control techniques;

(4) Monitoring or measuring employee exposure to toxic materials or harmful physical agents at locations and intervals sufficient to afford protection;

(5) Where appropriate, medical examinations at no cost to the employee, with the results made available to the Mayor and to the Commission when necessary to administer or enforce the provisions of this act and to the employee or, at the request of the employee, to the physician of the employee; and

(6) Posting of notices or use of other appropriate means to inform employees of protections and obligations under this act, including applicable occupational safety and health rules.

(e) Whenever objections are made to a standard proposed for adoption under subsection (b) of this section, the rule promulgated shall be based upon the record. A person who may be adversely affected by a rule promulgated under paragraph (b)(1) or (2) of this section or under section 10(a) may, at any time prior to 60 days after the rule is promulgated, file a petition challenging the validity of the rule with the District of Columbia Court of Appeals. The filing of the petition shall not, unless ordered by the court, operate as a stay of the rule. The determinations of the Board shall be conclusive if supported by substantial evidence in the record.

Sec. 10. Emergency temporary rules.

(a) The Board may adopt an emergency temporary rule pursuant to section 6(c) of the APA (D.C. Code, sec. 1-1506(c)) whenever an emergency temporary rule is issued pursuant to the Federal Act or whenever the Board determines:

(1) That employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and

(2) That an emergency temporary rule is necessary to protect employees from that danger.

(b) When an emergency temporary rule promulgated under the Federal Act has been adopted as an emergency temporary rule by the Board, the rule shall be effective until both the Secretary and the Board have either withdrawn the emergency temporary rule or promulgated a permanent rule superceding the temporary rule, but in no instance shall the rule remain in effect for longer than 120 calendar days.

(c) When the Board has provided for an emergency temporary rule not promulgated under the Federal Act, the rule shall be effective until superceded by a rule promulgated in accordance with section 9(b) or until a determination is made that no rule shall be promulgated, but in no instance shall the rule remain in effect for longer than 120 calendar days.

(d) Notice shall not be a prerequisite to the enforcement of an emergency temporary rule by the Mayor.

Sec. 11. Temporary variances; application for temporary order.

New, Sectio 36-121

(a) An employer may apply to the Board for a temporary order granting a variance from a rule or a provision of a rule promulgated pursuant to this act. The temporary order shall be granted only if the employer files an application that meets the requirements of subsection (c) of this section and establishes that:

(1) The employer is unable to comply with the rule by its effective date because of the unavailability of professional or technical personnel or materials and equipment needed to come into compliance with the rule or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) The employer is taking all available steps to safeguard the employees of the employer against the hazards covered by the rule which is the subject of the variance; and

(3) The employer has an effective program for coming into compliance with the rule as quickly as practicable.

(b) A temporary order issued pursuant to subsection (a) shall prescribe the practices, means, methods, operations, and processes that the employer must adopt and use while the temporary order is in effect and state, in detail, the employer's program for coming into compliance with the rule. The temporary order may be granted only after notice to the employees of the employer requesting the variance and after there has been an opportunity for a hearing. The Board may issue 1 interim temporary order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance

with the rule or 1 year, whichever is shorter. A temporary order may be renewed not more than twice if the requirements of this section are met and if an application for renewal is filed at least 90 days prior to the expiration date of the temporary order. No interim temporary order renewal may remain in effect for more than 180 days.

(c) An application for a temporary order shall contain:

(1) A specification of the rule or portion of the rule from which the employer seeks a variance;

(2) A representation by the employer, supported by representations from qualified persons having first hand knowledge of the facts represented, that the employer is unable to comply with the rule or portion of the rule and a detailed statement of the reasons for the inability to comply;

(3) A statement of the steps that the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the rule;

(4) A statement of when the employer expects to be able to comply with the rule and the steps the employer has taken and will take, with specific dates, to come into compliance with the rule;

(5) Certification describing how the employees of the employer have been informed of the pending application, that the employees have been informed of their right to petition the Board for a hearing, and that the employees have been informed of the application by:

(A) Providing a copy of the application to the authorized representative of the employee;

(B) Posting a summary of the application at a place that notices to employees are normally posted specifying where a copy of the complete application may be examined; and

(C) Other appropriate means.

(d) The Board is authorized to grant a variance from a rule or portion of a rule whenever the Board determines that a variance is necessary to permit an employer to participate in an experiment approved by the employer and designed to demonstrate or validate new and improved techniques to safeguard the safety or health of employees.

Sec. 12. Permanent variances.

(a) An affected employer may apply to the Board for a permanent variance from a rule promulgated under this act. The employer shall provide to affected employees notice of each application and an opportunity to participate in a hearing. The Board shall issue the requested variance if the Board determines, on the record after there has been an opportunity for an inspection and, where appropriate, a

hearing, that the proponent of the variance has demonstrated, by a preponderance of the evidence, that the conditions, practices, means, methods, operations, or processes used or proposed to be used by the employer will provide conditions and places of employment that are as safe and healthful as those that would prevail if the employer complied with the rule.

(b) The variance issued by the Board shall prescribe the conditions the employer must maintain and the practices, means, methods, operations, and processes that the employer must adopt and utilize to the extent that they differ from the rule in question. The Board may modify or revoke the variance upon application by an employer, employee, or by the Board on its own motion, in the manner prescribed for its issuance under this section at any time after 6 months of its issuance.

Sec. 13. Inspection and investigations. New, Sectio 36-121

(a) In order to carry out the purposes of this act, the Mayor, upon presenting appropriate credentials to the employer, is authorized, consistent with constitutional guidelines to:

(1) Enter without delay and at reasonable times, a workplace, where work is performed by an employee of an employer; and

(2) Inspect or investigate during regular work hours, at other reasonable times, within reasonable limits, and in a reasonable manner any place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, records of injuries, illnesses, and exposure to toxic materials and harmful physical agents and to question privately any person having control or custody of the workplace.

(b) The Mayor may administer oaths and require, by subpoena, the testimony of witnesses and the production of all books, registers, and other evidence relative to an inspection or investigation. The Mayor shall prescribe, by rule, fees and mileage to be paid to witnesses. The employer shall not deny regular pay or benefits to an employee subpoenaed by the Mayor as a witness. In case of failure to comply with a subpoena, the Mayor may invoke the aid of the Superior Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of evidence. In the case of contumacy or refusal to obey a subpoena, the court may issue an order requiring an appearance before the court, the production of evidence, and testimony regarding the matter in question. Failure to obey the court order may be punished by the court as contempt.

New, Sect 36-1

(c) The employer or a representative of the employer and an employee or an authorized representative of the employee shall be given an opportunity to accompany the Mayor during the physical inspection or investigation of the place of employment to aid in any inspection or investigation of the place of employment. An employee participating in an inspection pursuant to this subsection shall not be subject to wage deduction for a reasonable amount of time spent in connection with the inspection. When there is no employee or authorized employee representative, the Mayor shall consult with a reasonable number of employees concerning occupational safety and health matters in the workplace.

(d) Any person who believes that a violation of an occupational safety and health rule exists, that a violation of this act has occurred that threatens physical harm, or that an imminent danger exists may, at any time, request an inspection or investigation by giving notice to the Mayor of the suspected violation or danger. Notice may be given orally or in writing, and shall identify with reasonable particularity the suspected violation or danger.

(e) Notice, including a summary statement prepared by the Mayor setting forth the alleged violation, shall be provided to the employer or the agent of the employer no earlier than at the time of inspection or investigation, unless earlier notice is ordered by the Mayor for good cause. The name of the person or employees referred to in the request for inspection or investigation shall not appear in the notice to the employer or on any record published, released, or made available pursuant to this act.

(f) If upon receipt of notice, the Mayor determines that there is reason to believe that a violation or danger exists, the Mayor shall make an inspection or investigation in accordance with the provisions of this section, as soon as practicable, to determine if the violation or danger exists. If the Mayor determines that there is no reason to believe that a violation or danger exists, the Mayor shall notify the person who requested the inspection or investigation, if known, or the authorized representative of the person who requested the inspection or investigation, and provide a written statement of the final disposition of the case and the reasons.

Sec. 14. Recordkeeping and reporting.

(a) Each employer shall make, keep, preserve, and make available to the Mayor any records relating to this act that the Mayor may require, by rule, for the enforcement of this act or for the development of information regarding the causes and prevention of occupational accidents and

illnesses. The rules may include provisions requiring employers to conduct periodic inspections.

(b) The Mayor shall promulgate rules requiring employers to maintain accurate records of and to make periodic reports on work-related deaths, injuries and illnesses, other than minor injuries requiring minimal treatment, regardless of whether minor injuries are reportable under the District of Columbia Workers' Compensation Act of 1979, effective May 14, 1980 (D.C. Law 3-77; D.C. Code, sec. 36-301 et seq.).

(c) All employers, to the extent required by the Federal Act, shall maintain records and make reports to the Secretary of Labor in the same manner and to the same extent that would be required if no state plan were in effect under section 18(c) of the Federal Act (29 U.S.C. 667(c)).

(d) The Mayor shall promulgate rules to require employers to maintain accurate records of employee exposure to any potentially toxic materials or harmful physical agents required to be monitored or measured under section 9 of this act. The rules shall provide employees or other authorized representatives the right to observe the monitoring or measuring of potentially toxic materials or harmful physical agents and to access to the records. The rules shall make appropriate provisions for each employee, former employee, or the authorized representative of the employee or former employee to have access to the records on the exposure of the employee or former employee to toxic materials or harmful physical agents and to periodic summaries and other records required to be kept in the workplace under this act, except medical records of other employees and former employees. Information contained in records and reports concerning employee exposure to toxic substances, may be made public and disseminated to employers, employees, or other representative organizations without disclosure of the name of individual who is the subject of the physical examination or special study.

(e) Each employer shall promptly notify each employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels that exceed those prescribed by an applicable occupational safety and health rule promulgated under this act. Each employer shall promptly undertake to reduce the exposure to compliance levels and inform each employee who is being exposed of the corrective action being taken.

(f) Each employer shall notify the Mayor, within 24 hours, of an accident or occurrence that causes the death of an employee or a life threatening injury requiring the hospitalization of an employee.

(g) Each employer shall submit to the Mayor, within 10 days from the date of an injury or the date that the

employer has knowledge of a disease or infection resulting from an injury, a duplicate copy of the report required to be made pursuant to section 8(c) of title II of An Act To protect the lives and health and morals of women and minor workers in the District of Columbia, and to establish a Minimum Wage Board, and define its powers and duties, and to provide for the fixing of minimum wages for such workers, and for other purposes, approved October 14, 1941 (55 Stat. 740; D.C. Code, sec. 36-228(c)).

Sec. 15. Citations.

(a) If, upon an inspection or investigation, the Mayor believes that an employer has violated a requirement of section 4 or a rule or order promulgated pursuant to sections 9, 10, 11, or 12 the Mayor shall, after completion of the inspection or investigation, issue a citation to the employer in accordance with subsection (e) of this section. The citation shall be served on the employer in person or by certified mail. The Mayor may prescribe procedures for the issuance of a notice instead of a citation for minor violations that have no direct or immediate relationship to safety or health.

(b) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the act, rule, or order alleged to have been violated. The Mayor shall, by rule, prescribe reasonable time periods for the abatement of violations and each citation shall fix a time period for abatement in accordance with the rules. Each citation shall specify that the employer has 15 working days, excluding the date of receipt, Saturdays, Sundays, and legal holidays, to notify the Mayor that the employer intends to contest the citation, abatement period, or proposed penalty, if any.

(c) If a civil penalty is proposed to be assessed under section 21, the Mayor shall, concurrently with the issuance of a citation, issue a notice including a reference to the provision of this act or rule identifying the proposed penalty and the amount of the proposed penalty.

(d) Each citation issued under this section shall be prominently posted, as prescribed in rules issued by the Mayor, at or near each place of the violation referred to in the notice. Each citation shall be posted immediately upon issuance and, unless otherwise required by rule, shall remain posted until the violation has been abated.

(e) No citation may be issued more than 3 months following the discovery of a violation by the Mayor.

Sec. 16. Procedure for enforcement.

(a) If, within the time period following service of a citation specified in section 15, the employer fails to

notify the Mayor that the employer intends to contest the citation or proposed penalty and no notice is filed by an employee or representative of the employee under subsection (c) of this section within the time specified, the citation and the notice of the proposed penalty shall be deemed a final order of the Mayor, not subject to administrative or judicial review.

(b) If the Mayor has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction, the Mayor shall notify the employer, by certified mail or by service as prescribed in section 15, of the failure, the proposed penalty under section 21, and that the employer has the time period specified in section 15 within which to notify the Mayor that the employer wishes to contest the citation or the proposed penalty. If, within that time period, the employer fails to notify the Mayor that the employer intends to contest the citation or the proposed penalty, the citation and proposed penalty shall be deemed a final order of the Mayor, not subject to administrative or judicial review.

(c) If an employer notifies the Mayor that the employer intends to contest a citation or a proposed penalty issued under section 15 or notification issued under subsection (b) of this section or if, within the time period specified in section 15 following the issuance of a citation, an employee or employee representative files notice with the Mayor alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Mayor shall immediately afford the employer or employee an opportunity for a hearing and issue a decision and an order based on findings of fact and conclusions of law affirming, modifying, or vacating the citation issued by the Mayor, the time fixed in the citation for the abatement of the violation, or the proposed penalty or directing other appropriate relief. Upon a showing by an employer of a good-faith effort to comply with the abatement requirements of a citation and that abatement has not been completed because of factors beyond the reasonable control of the employer, the Mayor, after an opportunity for a hearing has been provided in accordance with this subsection, shall issue a decision and an order affirming or modifying the abatement requirement in the citation. The rules of procedure prescribed by the Mayor shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings conducted under this subsection.

(d) The decision and order of the Mayor shall become the final decision and order unless the employer, employee, or representative of the employer or employee files an

appeal with the Commission within 30 days after service of the decision or order. The Commission may review the record for error and each party shall be afforded an opportunity to present argument, either orally or in writing as the Commission may prescribe. The Commission shall provide a copy of its decision to each party or the party's representative of record. The Commission may sustain, reverse, modify, or vacate the decision or order of the Mayor or remand the case to the Mayor for further proceedings.

(e) The period for correction of a violation shall not begin to run until the entry of a final order by the Commission, if the employer initiates review proceedings under this section in good faith.

Sec. 17. Judicial review and enforcement.

(a) Within 60 days of the issuance of a decision or order by the Commission or the issuance of a final order of the Mayor when the Commission does not review a decision or order of the Mayor, an employer, employee, or representative of an employee, suffering a legal wrong or adversely affected or aggrieved by an order or decision of the Commission or an employer, employee, or representative of an employee adversely affected or aggrieved by a final order or decision of the Mayor when the Commission does not review a decision or order is entitled to review by the District of Columbia Court of Appeals in accordance with section 11 of the APA (D.C. Code, sec. 1-1510). The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission or the final order of the Mayor when the Commission does not review a decision or order.

(b) If no appeal is taken as prescribed in subsection (a), upon the conclusion of judicial appellate proceeding where a stay has not been granted to the Commission, when the Mayor is upheld by the court when the Commission does review a decision or order, upon the final order of the Mayor when the Commission does review a final decision or order of the Mayor, or when a citation is not contested, the Mayor may apply to the Superior Court to enforce any abatement requirement prescribed. Failure to comply with the abatement order may be punished by the court as contempt. In a contempt proceeding the court may assess the penalties provided in section 21 in addition to other available remedies.

(c) When a penalty has been assessed or imposed by the Mayor under section 16 but not paid and no timely appeal is taken by an affected party under subsection (a), upon the conclusion of judicial appellate proceedings in which the Commission or the final order of the Mayor, when the

Commission does review the decision or order, is upheld, or where a citation is not contested, the Mayor may file a certified copy of the final order with the Superior Court. Upon notice to the parties, as prescribed by rules issued pursuant to this act, the court shall enter judgment. The judgment and all proceedings in relation to it shall have the same effect as a judgment entered in a civil action in the Superior Court.

Sec. 18. Nondiscrimination. New, Sectio 36-121

(a) No person shall discharge or discriminate against an employee because an employee has filed a complaint, instituted or caused to be instituted a proceeding pursuant to this act, testified or is about to testify in a proceeding, exercised a right afforded by this act on behalf of the employee or others, or performed any duty pursuant to this act.

(b) An employee who believes that he or she has been discharged or otherwise discriminated against in violation of subsection (a) of this section may, within 60 days after the violation, file a complaint with the Commission alleging discrimination. Upon receipt of the complaint, the Chairperson of the Commission shall order an investigation and provide an opportunity for the parties to present evidence to the Commission. If the Commission determines that subsection (a) of this section has been violated, the Commission shall issue a decision and order requiring the person who committed the violation to take necessary and appropriate affirmative action to abate the violation, including rehiring or reinstating the employee to his or her former position with back pay.

(c) Within 90 days of the receipt of a complaint filed under this section, the Commission shall notify the complainant of the determination of the Commission pursuant to subsection (b) of this section.

(d) An employer or employee aggrieved by a decision rendered by the Commission pursuant to this section is entitled to review by the District of Columbia Court of Appeals in accordance with section 11 of the APA (D.C. Code, sec. 1-1510).

(e) No employee shall be discharged or otherwise disciplined for refusal to perform work that the employee believes creates a dangerous situation that could cause harm to the physical health or threatens the safety of the employee or another employee, for which the employee is inadequately trained, or under conditions which are in violation of the health and safety rules of the District or federal health and safety or environmental laws.

Sec. 19. Procedures to counteract imminent danger. New, Sectic 36-121

(a) The Superior Court shall, upon petition of the Mayor, restrain or enjoin conditions or practices in any place of employment which are a danger and could reasonably be expected to cause death or serious physical harm either immediately or before the imminence of danger can be eliminated through enforcement procedures otherwise provided for by this act. The court may require steps to be taken to avoid, correct, or remove the imminent danger. The court may prohibit the employment or presence of an individual in locations or under conditions where imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger, or to maintain operation, resume normal operations without a complete cessation of operations, or to permit the cessation of operations to be accomplished in a safe and orderly manner when cessation of operations is necessary.

(b) Upon the filing of a petition, the Superior Court may grant permanent injunctive relief or a temporary restraining order pending the outcome of an enforcement proceeding instituted pursuant to this act. No temporary restraining order issued without notice shall be effective for more 5 days.

(c) The Mayor shall, immediately upon concluding that conditions or practices described in subsection (a) of this section exist in a place of employment, inform the affected employees and employers of the danger and that relief is being sought.

(d) If the Mayor arbitrarily or capriciously fails to seek relief under this section, an employee or employee representative who may be injured by reason of the failure may seek a writ of mandamus in the Superior Court to compel the Mayor to seek an order of relief and any further relief that may be appropriate.

Sec. 20. Confidentiality of trade secrets.

All information reported to or otherwise obtained by the Mayor or the Commission in connection with an inspection, investigation, or proceeding under this act which contains or which might reveal a trade secret, shall be considered confidential, except that information may be disclosed to other officers or employees when necessary to administer or enforce this act. The Mayor, Commission, or court shall issue orders to protect the confidentiality of trade secrets.

Sec. 21. Civil penalties.

(a) An employer who willfully or repeatedly violates the requirements of section 4, a rule promulgated or order issued pursuant to section 9, 10, 11, or 12 or any other

rule promulgated pursuant to this act, may be assessed a civil penalty of not more than $10,000 for each violation.

(b) An employer who has received a citation for a serious violation, as set forth in subsection (g) of this section, of the requirments of section 4, a rule promulgated or order issued pursuant to section 9, 10, 11, or 12 or any other rule promulgated pursuant to this act, shall be assessed a civil penalty of not more than $1,000 for each violation.

(c) An employer who has received a citation for a violation of the requirements of section 4, a rule promulgated or order issued pursuant to section 9, 10, 11, or 12 or any other rule promulgated pursuant to this act, when the violation is determined not to be a serious violation, may be assessed a civil penalty of up to $1,000 for each violation.

(d) An employer who fails to correct a violation for which a citation has been issued pursuant to section 15(a) within the period permitted for its correction may be assessed a civil penalty of not more than $1,000 for each day a failure or violation continues.

(e) An employer who violates posting or reporting requirements of this act shall be assessed a civil penalty of up to $1,000 for each violation.

(f) The Mayor shall, in accessing civil penalties pursuant to this act, consider the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, the history of previous violations, and whether the employer, with the exercise of reasonable diligence, knew or could have known of the presence and seriousness of the violation.

(g) A serious violation shall be deemed to exist in a workplace if there is a substantial probability that death or serious physical harm could result from a condition which exists or from 1 or more practices, means, methods, operations, or processes which have been adopted or are in use in the workplace, unless the employer did not know or could not, with the exercise of due diligence, know of the presence of the violation.

(h) Civil penalties owed pursuant to this act shall be paid to the District of Columbia Treasurer for deposit in the general fund. In addition to any other remedy authorized by law, penalties may be recovered in a civil action in the name of the District government in Superior Court.

Sec. 22. Criminal penalties.

(a) An employer who willfully violates a rule promulgated or order issued pursuant to sections 9, 10, 11, or 12 or any other rule promulgated pursuant to this act, and that violation causes death to an employee, the

employer, shall, upon conviction, be subject to a fine of not more than $10,000, imprisonment for not more than 6 months, or both. If the conviction is for a second violation of a rule or order referenced in this section, the employer shall be fined not more than $20,000, imprisoned for not more than 1 year, or both.

(b) A person who gives advance notice of an inspection to be conducted under this act, without authority from the Mayor, shall, upon conviction, be fined of not more than $1,000, imprisoned for not more than 6 months, or both.

(c) Whoever knowingly makes a false statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained pursuant to this act shall, upon conviction, be fined not more than $10,000, imprisoned for not more than 6 months, or both.

(d) Prosecutions brought pursuant to this section shall be in the name of the District of Columbia upon information filed in the Superior Court by the Corporation Counsel.

Sec. 23. Action against the District government.

(a) The provisions of section 21 and section 22 shall not apply to a District government or quasi-government agency or an entity established pursuant to interstate compact, except as provided in subsection (b) of this section.

(b) An affected employee of a District government or quasi-governmental agency or entity established pursuant to interstate compact may bring suit in the Superior Court of the District of Columbia against a District government or quasi-governmental agency or an entity established pursuant to interstate compact for a violation of this act. The court shall assess monetary penalties as provided in section 21 and section 22, except that the penalties shall be awarded to the affected employee against the District government or quasi-governmental agency or entity established pursuant to interstate compact, should the affected employee prevail in the suit. Reasonable attorneys fees shall be awarded to the affected employee against the District government or quasi-governmental agency or entity established pursuant to interstate compact should the affected employee prevail in the suit, or if, prior to order by the court, the suit is settled in substantial conformity with the relief sought in the petition.

(c) An affected employee of the District government or quasi-governmental agency or an entity established pursuant to interstate compact may bring suit in the nature of mandamus in the Superior Court of the District of Columbia directing the Mayor, the head of the quasi-governmental

agency, or the head of the entity established pursuant to interstate compact to comply with the provisions of this act. Reasonable attorneys fees shall be awarded to the affected employee against the District government or quasi-governmental agency or entity established pursuant to interstate compact should the affected employee prevail in the suit, or if, prior to order by the court, the suit is settled in substantial conformity with the relief sought in the petition.

(d)(1) When any citation or order finding the District government in violation of this act becomes final pursuant to section 16 or 17, the Mayor shall post in various conspicuous sites around the relevant worksite, notices to read as follows:

WARNING

HAZARDOUS WORKSITE

Pursuant to the District of Columbia Occupational Safety and Health Act of 1988, this worksite, located at (address), has been determined to be hazardous to the health of the employees required to work here. Accordingly, pursuant to Section 18(e) of that act, employees may not be discharged or otherwise disciplined for refusal to perform work under conditions which are in violation of the health and safety rules of the District or federal health and safety or environmental laws. For further information, contact your union representative or the D.C. Office of Occupational Safety and Health (Phone: 576-6339 / Address: 950 Upshur St., N.W.)

New, Sect 36-12

(2) The notices shall remain in place until the hazardous conditions are abated. The notices shall also be published daily in at least 2 newspapers of general circulation in the District, and the publication shall continue until the hazardous conditions are abated or the employees are moved to a worksite that complies with the District or federal health and safety or environmental laws.

Sec. 24. Establishment of Office of Occupational Safety and Health; promulgation of rules and regulations.

New, Sectio 36-122

Upon approval of the plan by the Secretary, the Mayor shall have 2 years to establish the Office of Occupational Safety and Health and to promulgate rules to carry out the provisions of this act. Nothing in this act shall affect any requirements imposed upon the Mayor by the APA (D.C. Code, sec. 1-1501 et seq.).

Sec. 25. Repeal.

Repealed Subchapt II of Chapter of title 36

Title II of An Act To protect the lives and health and morals of women and minor workers in the District of

Columbia, and to establish a Minimum Wage Board, and define its powers and duties, and to provide for the fixing of minimum wages for such workers, and for other purposes, approved October 14, 1941 (55 Stat. 738; D.C. Code, sec. 36-221 et seq.), is repealed.

Sec. 26. Applicability.

(a) Sections 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 shall apply 2 years after approval of the plan by the Secretary.

(b) Rules and standards adopted pursuant to any act repealed or superseded by this act shall remain in effect following the effective date of this act, unless replaced or repealed by rules and standards promulgated under this act.

(c) Nothing in this act shall be construed to supercede or in any manner affect any worker's compensation law or to enlarge or diminish the common law or statutory rights, duties, or liabilities of employers and employees with respect to any injury, disease, or death of an employee arising from or in the course of employment.

Sec. 27. Effective date.

This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1)), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations.

Chairman
Council of the District of Columbia

DEEMED APPROVED WITHOUT
SIGNATURE UPON EXPIRATION
OF 10-DAY MAYORAL REVIEW PERIOD.

NOT SIGNED
Mayor
District of Columbia

APPROVED WITHOUT SIGNATURE NOVEMBER 2, 1988

COUNCIL OF THE DISTRICT OF COLUMBIA

Council Period Seven

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: Bill 7-28

☐ Item on Consent Calendar

☒ ACTION & DATE: Adopted First Reading, 9-27-88

☐ VOICE VOTE: _____

Recorded vote on request

Absent: _____

☒ ROLL CALL VOTE: — RESULT Approved (12 / 0 / 0 / 1)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CLARKE	X				NATHANSON	X				THOMAS SR.	X			
FORD	X				RAY	X				WILSON	X			
	X				ROLARK	X				WINTER	X			
	X				SCHWARTZ				X					
	X				SMITH, JR.	X								

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Rosemary Smith — Secretary to the Council

10-18-88 — Date

☒ Item on Consent Calendar

☒ ACTION & DATE: Adopted Final Reading, 10-11-88

☒ VOICE VOTE: Approved

Recorded vote on request

Absent: all present

☐ ROLL CALL VOTE: — RESULT _____ (___/___/___/___)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CLARKE					NATHANSON					THOMAS, SR.				
FORD					RAY					WILSON				
					ROLARK					WINTER				
					SCHWARTZ									
					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Rosemary Smith — Secretary to the Council

10-18-88 — Date

☐ Item on Consent Calendar

☐ ACTION & DATE: _____

☐ VOICE VOTE: _____

Recorded vote on request

Absent: _____

☐ ROLL CALL VOTE: — RESULT _____ (___/___/___/___)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CLARKE					NATHANSON					THOMAS, SR.				
FORD					RAY					WILSON				
					ROLARK					WINTER				
					SCHWARTZ									
					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council — Date

87—P6070 wd33