

A BILL

20-62

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To require large retailers, located in the District and whose parent companies gross revenues total \$1 billion or more, to pay employees that make less than \$50,000 a year a living wage, the living wage is established at \$12.50 an hour, to exempt franchises from paying a living wage, to allow a large retailer to use any reasonable methodology to prorate the hourly costs of any benefits that it provides toward payment of the living wage, to require the District to publish a bulletin announcing the living wage each year, to mandate a large retailer post the living wage bulletin on their premises, to grant the Mayor or his or her designee the authority to inspect a large retailers records to make sure they are in compliance with this act, to grant protections to employees who exercise their rights under this act from possible retaliation from large retailers, and to exempt from the requirements of this act for four years large retailers that are currently operating in the District.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That
this act may be cited as the “Large Retailer Accountability Act of 2013”.

Sec. 2. Findings.

The Council of the District of Columbia finds that:

(1) The Council of the District of Columbia declares that it is the policy of the District to promote living wage jobs to help working families make ends meet and protect the health, safety and welfare of our community.

(2) Large retailers are becoming an important source of jobs for local residents.

By adopting living wage standards for large retailers, the District can ensure that economic development better meets the community's need for family-supporting jobs.

(3) The District has the authority to mandate social and economic policies as long as the policy is rationally related to a legitimate state interest.

(4) There are three legitimate interests in requiring large retailers to pay a living wage which are:

(A) Save the District government money on costs associated with social services;

(B) Expand the District's economy by augmenting spending by District residents who would earn a living wage; and

(C) Provide a higher income to District residents so they can better afford to live in the District.

(5) Retailers that pay living wages and provide affordable health benefits face growing pressure to cut back when their competitors are permitted to pay low wages and offer no benefits. The result could be increased costs to the District when businesses that provide health care to their employees are replaced by businesses that do not and instead rely on city health clinics, public hospitals, and publicly funded programs such as Medicaid to provide health care to their employees.

(6) A living wage would provide a family more income, which in turn would reduce the Earned Income Tax Credit they receive from the District government. A family would rely more on wage income and less on government tax subsidies to make ends meet.

(7) Providing full-time employment with a living wage would lift two-thirds of District working poor families out of poverty and help them get off the Temporary Assistance for Needy Families program.

(8) Requiring a living wage would not only give more money to working families when they need it most, but it would be a positive impact on the District's economy. Low-wage workers are more likely than any other income group to spend any extra earnings immediately on previously unaffordable basic needs or services.

(9) A living wage would help shift revenues that would be made from businesses that are not located in the District to District residents thereby augmenting their spending power. In turn, District residents would spend those extra funds within the District on goods and services. The increased spending would boost the economy and create jobs.

(10) States that have mandated higher minimum wages have seen growth in employment 50% greater than in states where the federal minimum wage prevails.

(11) Retail employment grew by 6.1% in the states with a higher minimum wage versus 1.9% in states with a lower minimum wage.

(12) The cost of living in the District is a real hardship for low-wage workers. The District is the ninth most expensive city in the United States to reside.

(13) Living wages would make it easier for families to be able to afford to live in the District.

(14) Wal-Mart has already detailed to District residents that it intends to offer full and part-time employees a healthcare plan and they plan to create jobs that would pay an average of \$12.49 an hour.

(15) The District should embrace businesses' wage and benefit promises, such as Wal-Mart's, and require by law that large retailers provide living wages and benefits.

(16) The retail industry has oversaturated the rural and suburban markets, so the only way they can grow is to expand in large urban centers.

(17) With the influx of over 1,000 residents a month there is a growing and dynamic market for large retailers to thrive in the District

(18) It is appropriate to set a standard for larger businesses in the retail industry because:

(A) Large retailers are better able to afford the cost of paying a living wage than many other kinds of employers since most of them make profits well in excess of \$1 billion a year;

(B) A number of large retailers in the region are already paying a living wage, providing evidence that it is feasible for employers in this industry to create good jobs while still operating profitably;

(C) Large retailers generally are less likely than other kinds of businesses to respond to such regulation by closing or reducing employment because the retail industry is more location-dependent; and

(D) Other cities, such as Sante Fe and San Francisco, which have enacted living wage laws have experienced no negative impact on retail employment and development.

Sec. 3. Definitions.

For the purposes of this act, the term:

(1) “Benefits” means payments made by a large retailer for any bona fide fringe benefits paid directly to an employee or to a third party on behalf of an employee or employee’s family, such as benefits related to health care, retirement security, disability, training and education, or paid leave, but excluding any payments that are deducted from an employee’s wages or otherwise reimbursed by an employee, or that are required by any federal or District law.

(2) “Business” means a business corporation as defined in the District of Columbia Official Code § 29-101.02(2).

(3) “Employee”:

(A) Means an individual who is employed by a large retailer on a part-time or full-time basis.

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(B) Does not include any managerial or administrative employees receiving more than \$50,000 per year in wages, salary, bonus, commission or other compensation from a large retailer.

(4) "Franchise" means an express, implied, oral or written agreement in which:

(A) A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by the franchisor;

(B) The operation of the business under the marketing plan or system is associated substantially with the trademark, service mark, trade name, logotype, advertising, or other commercial symbol that designates the franchisor or its affiliate; and

(C) The franchisee must pay directly or indirectly a franchise fee to the franchisor.

(5) "Franchisee" means a person to whom a franchise is granted.

(6) "Franchisor" means a person who grants a franchise.

~~(7) "Large retailer" means any business, excluding franchisees, which operate a retail store located within the geographic boundaries of the District where the parent company's gross revenues total \$1 billion or more on an annual basis.~~

(7) "Large retailer" means any business, which operates a retail store located within the geographic boundaries of the District, where:

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(A) The indoor premises of the retail store comprise 75,000 square feet or more. For the purposes of this definition, the indoor premises of adjacent stores shall be aggregated if the stores share check stands, management, controlling ownership, a warehouse, or a distribution facility; and

(B) The parent company, including the REIT of the parent company, gross revenues of \$1 billion or more on an annual basis.

(8) "Parent company" means a common parent as defined in 26 U.S.C. § 1563.

(9) "REIT" means a real estate investment trust as defined in 26 U.S.C. § 856.

(10) "Retail store"

(A) Means a business that sells goods in smaller quantities than the business buys with a view to profit.

(B) Does not include banks, conventions, credit unions, educational institutions, franchisees, hospitals, hotels, restaurants, savings institutions and trade shows

Sec. 4. Living wages and benefits.

(a) Large retailers shall provide employees an hourly compensation package with a value of no less than the living wage.

(b) Large retailers may provide new employees minimum compensation of up to \$2.00 less than the living wage for the first 90 calendar days after the employee's date of hire.

(c) The Mayor shall establish living wage rates according to the following guidelines:

(1) Beginning on the effective date of this act, the living wage rate shall be an hourly rate of \$12.50.

(2) No later than January 1 of each successive year, the living wage rate shall be increased in proportion to the increase during the preceding twelve months, if any, in the Consumer Price Index for All Urban Consumers in the Washington Metropolitan Statistical Area, as published by the U.S. Bureau of Labor Statistics of the United States Department of Labor.

(d)(1) The prorated hourly cost of any benefits that a large retailer chooses to provide an employee may be credited toward payment of the minimum hourly compensation required under this act, provided that this provision shall not be construed as amending or superseding any other applicable District and federal wage laws.

(2) A large retailer may use any reasonable methodology for determining the hourly dollar value of any benefits provided and may, at its election, use each quarter, month or pay period as the relevant period for calculating the prorated hourly value of any benefits provided.

(e) The provisions of this section may be waived by the written terms of a bona fide collective bargaining agreement.

Sec. 5. Employment of District residents.

Prior to publishing any notice of vacancy, a large retailer shall announce the vacancy to one or more of the following District agencies:

(1) Department of Employment Services;

(2) Department of Human Services, Income Maintenance Administration;

(3) Child and Family Services Agency, Teen Services;

(4) Department of Youth Rehabilitation, Youth and Family Empowerment;

(5) Department on Disability Services; and

(6) Office on Re-entry and Returning Citizens Affairs.

Sec. 6. Notice, posting and payroll records.

(a) By December 1 of each year, the Mayor shall publish and make available to large retailers, in English and Spanish, a notice suitable for posting by large retailers in the workplace informing employees of the current living wage and benefits rate, which shall take effect on January 1 of the following year, and of their rights under this act.

(b) Every large retailer shall post in a conspicuous place at any workplace or job site where an employee works the notice required by subsection (b) of this section.

(c)(1) Large retailers shall retain payroll and benefits records pertaining to employees for a period of four years, and shall allow the Mayor access to such records to monitor compliance with the requirements of this act.

(2) Large retailers shall permit an employee or an employee's designated representative to inspect the large retailer's payroll and benefits pertaining to the employee.

(d)(1) Where a large retailer does not maintain or retain adequate records documenting

wages paid or does not allow the Mayor reasonable access to such records, there shall be a rebuttable presumption that the large retailer has not paid the living wage.

(2) This presumption may be overcome if the large retailer proves by clear and convincing evidence that the large retailer has paid the living wage.

Sec. 67. Prohibition against retaliation.

(a) It shall be unlawful for a large retailer to discriminate in any manner or take adverse action against an employee in retaliation for exercising rights protected under this act or for informing other employees of any legal rights under federal or District, to the extent that such protection is permitted by federal or District law.

(b) Rights protected under this act include, but are not limited to:

(1) The right to file a complaint or inform any person about any party's alleged noncompliance with this act or any other federal or District law; and

(2) The right to inform any person of his or her potential rights under this act or other laws and to assist an employee in asserting such rights.

(c) Protections of this act shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this act or any other law.

(d) Taking adverse action against a person within 90 days of the employee's exercise of rights protected under this act shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

Sec. 78. Implementation and enforcement.

(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code §2-501 *et. seq.*) shall issue rules to implement the provisions of this act.

(b) This act shall be enforced pursuant to the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1001 *et. seq.*).

(c)(1) An employee or similarly situated employees injured by violation of this act shall be entitled to maintain an action in any court of competent jurisdiction to recover unpaid compensation, damages, and other appropriate relief.

(2) A prevailing plaintiff in such an action shall be entitled to recover from the large retailer his or her expenses in bringing the action, including reasonable attorney's fees and costs of the action.

(3) The remedies set forth herein are not exclusive of any other remedies available at law, and none is a prerequisite for pursuing another remedy.

(d) Any waiver by an individual of any of the provisions of this act shall be deemed contrary to public policy and shall be void and unenforceable, except that employees are not barred from entering into a written valid collective bargaining agreement waiving provisions of this act if such waiver is set forth in clear and unambiguous terms.

(e) This act shall be liberally construed in favor of its purposes. If any provision or application of this act is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof shall remain in full force

or effect. The courts are hereby authorized to reform the provisions of this act in order to preserve the maximum permissible effect thereof.

Sec. ~~89~~. Applicability.

Large retailers operating in the District on the date this act becomes effective are not required to comply with the requirements of this act until four years after the effective date.

Sec. ~~910~~. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602 (c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02 (c)(3)).

Sec. ~~1011~~. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.