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2	Chairman Phil Mendelson	Council or Marion Bound	
3		Councilmember Marion Barry	
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6	Councilmember Anita Bonds	Councilmember Mary Cheh	
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12	Councilmember Tommy Wells	Councilmember Vincent Orange, Si	
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21	IN THE COUNCIL OF THE DISTRICT OF COLUMBIA		
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24 25	Councilmember Marion Barry introduced the following bill which was referred to the		
26	Councilmember Marion Barry introduced the following bill, which was referred to the Committee on		
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28	To amend the Accrued Sick and Safe Leave A	ct of 2008 to expand the definition of employees	
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30			
31	purposes.		
32	DE IT ENLACTED DA THE COLDICA	OF THE DISTRICT OF COLUMN	
33 34	BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the Earned Sick and Safe Leave Amendment Act of 2013.		
35	act may be ched as the Earned Sick and Safe I	Leave Amendment Act of 2013.	
36	Sec. 2. The Accrued Sick and Safe Lea	ave Act of 2008, effective May 13, 2008 (D.C.	
37	Law 17-152; D.C. Official Code § 32-131.01 et seq.), is amended as follows:		
38	(a) Section 2 (D.C. Official Code § 32-131.01) is amended as follows:		
39	(1) Paragraph (2) is amended to read as follows:		
40	"(2) The term "employee" inclu	des any individual employed by an employer,	
41	except that this term shall not include:		

l	"(A) Any individual who, without payment and without expectation of any	
2	gain, directly or indirectly, volunteers to engage in the activities of an educational, charitable,	
3	religious, or nonprofit organization;	
4	"(B) Any lay member elected or appointed to office within the discipline	
5	of any religious organization and engaged in religious functions;	
6	"(C) Any individual employed as a casual babysitter, in or about the	
7	residence of the employer;	
8	"(D) An independent contractor;	
9	"(E) A student; or	
10	"(F) A health care worker who chooses to participate in a premium pay	
11	program.	
12	(2) Paragraph (3) is amended by striking the phrase "who employs" and inserting	
13	the phrase "who directly or indirectly or through an agent or any other person, including through	
14	the services of a temporary services or staffing agency or similar entity, employs or exercises	
15	control over the wages, hours, or working conditions of" in its place.	
16	(b) Section 3 (D.C. Official Code § 32-131.02) is amended as follows:	
17	(1) Subsection (c) is amended to read as follows:	
18	"(c)(1) Paid leave under this Act shall accrue in accordance with the employer's	
19	established pay period. An individual shall accrue paid leave at the beginning of his or her	
20	employment. An employee may begin to access paid leave after 90 days of service with his or	
21	her employer. If an employee is transferred to a separate division, entity, or location within the	
22	District, or transferred out of the District and then transferred back to a division, entity, or	
23	location within the District, but remains employed by the same employer, the employee shall be	

entitled to all paid leave accrued at the prior division, entity, or location and shall be entitled to

2 use all paid leave as provided in this act. When there is a separation from employment and the

3 employee is rehired within one year of separation by the same employer, previously accrued paid

leave that had not been used shall be reinstated. The employee shall be entitled to use accrued

paid leave and accrue additional paid leave immediately upon the re-commencement of

6 employment, provided that the employee had previously been eligible to use paid leave. If there

is a separation of more than one year, an employer shall not be required to reinstate accrued paid

leave and the rehired employee shall be considered to have newly commenced employment.".

"(c)(3) An employee who is discharged after the completion of a 90-day probationary period and is rehired within 12 months may access paid leave immediately."

- (e) Section 3 (D.C. Official Code § 32-131.02) is amended to include a new subsection is amended to include new subsections (g) to read as follows:
- "(g) Paid leave for employees of restaurants and bars:

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- (1) If employees of restaurants or bars regularly receive tips, commissions or other gratuities to supplement a base wage that is below the minimum wage as established in the DC Minimum Wage Revision Act, DC Code 32-1003(a)(1), the compensation for each hour of sick and safe leave used shall be no less than \$10.00.
- (2) The Department of Employment Services shall increase the minimum compensation for each hour of sick and safe leave used established in subsection (g)(1) on an annual basis by the annual average increase, if any, in the Consumer Price Index for all Urban Consumers in the Washington Metropolitan Statistical Area published by the Bureau of Labor Statistics of the United States Department of Labor. This adjustment shall begin the 1st of January following the enactment date of this title. The Department shall calculate the adjustment

to the nearest multiple of \$.05 and shall publish the adjusted rate not later than March 1 of each 1 2 year. (3) If employees of restaurants or bars are paid an average base wage that is equal 3 to or higher than that established in the DC Minimum Wage Revision Act, DC Code 32-4 1003(a)(1), the compensation for each hour of sick and safe leave used shall be no less than that 5 6 average base wage. (d) Section 7(b) (D.C. Official Code § 32-131.06(b)) is amended to read as follows: 7 "(b) The paid leave requirements under this act shall not be waived for less than 3 paid 8 leave days by the written terms of a bona fide collective bargaining agreement, except that the 9 paid leave requirements under this act shall not apply to any employee in the building and 10 construction industry covered by a bona fide collective bargaining agreement to the extent that 11 the requirements are expressly waived in the collective bargaining agreement in clear and 12 unambiguous terms.". 13 14 (e) Section 9 (D.C. Official Code § 32-131.08) is amended by adding new subsections (d) and (e) to read as follows: 15 "(d) Taking adverse action against a person within 90 days of the following actions shall 16 17 raise a rebuttable presumption that the adverse action was taken in retaliation for the exercise of one or more rights provided by this act: 18 19 (1) The person's complaining to the employer; 20 (2) The person's filing a complaint with the Department of Employment Services: (3) The person's filing in court alleging a violation of any provision of this act; 21 22 (4) The person's informing any person about an employer's alleged violation of 23 this act;

1	(5) The person's cooperating with the Department of Employment Services or
2	other persons in the investigation or prosecution of any alleged violation of this act;
3	(6) The person's opposing any policy, practice, or act that is unlawful under this
4	act; or
5	(7) The person's informing any person of his or her rights under this act.
6	"(e) It shall be unlawful for an employer's absence control policy to count paid leave
7	taken under this act as an absence that may lead to, or result in, discipline, discharge, demotion,
8	suspension, or other adverse action.".
9	(f) Section 10(b)(1) (D.C. Official Code § 32-131.09(b)(1)) is amended to read as
10	follows:
11	"(b)(1) An employer who violates this section shall be assessed a civil penalty not to
12	exceed \$100 for each day that the employer fails to post the notice; provided, that the total
13	penalty shall not exceed \$500 unless the ongoing violation is willful.".
14	(g) New sections 11a and 11b are added to read as follows:
15	"Sec. 11a. Statute of limitations.
16	"All complaints brought under this act shall be filed within 3 years after the event on
17	which the complaint is based, except the 3-year period shall be tolled when an administrative or
18	other complaint is filed, or for the duration of any period during which the employer does not
19	post the notice required under section 10.
20	"Sec. 11b. Employer records.
21	"Employers shall retain records documenting hours worked by employees and paid leave
22	taken by employees, for a period of 3 years, and shall allow the Mayor access to the records,
23	with appropriate notice and at a mutually agreeable time, to monitor compliance with the

- requirements of this act. When an issue arises as to an employee's entitlement to paid leave
- 2 under this act, if the employer does not maintain or retain adequate records documenting hours
- worked by the employee and paid leave taken by the employee, or does not allow the Mayor
- 4 reasonable access to the records, it shall be presumed that the employer has violated this act,
- 5 absent substantial evidence otherwise.".
- 6 (h) Section 13 (D.C. Official Code § 32-131.12) is amended to read as follows:
- 7 "Sec. 13. Enforcement.

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- 8 "(a) Any violation of this act may be enforced by the Mayor or the employee as a claim
- 9 for unpaid wages under An Act To provide for the payment and collection of wages in the
- District of Columbia, approved August 3, 1956 (70 Stat. 976; D.C. Official Code § 32-1301 et
 - seq.). If an employer fails to allow an employee to use a paid leave as required by this act, the
- employer shall owe \$500 in additional damages to the employee for each accrued day denied,
- regardless of whether the employee takes unpaid leave or reports to work on that day.
- 14 "(b) Except as provided in section 10(b), an employer who willfully violates the
- requirements of this act shall be subject to a civil penalty of \$1,000 for the 1st offense, \$1,500
- for the 2nd offense, and \$2,000 for the 3rd and each subsequent offense.
- 17 "(c) If the Mayor determines that an employer has violated any provision of this act, the
- 18 Mayor shall order the employer to provide affirmative remedies including:
- "(1) Back pay for lost wages caused by the employer's violation of this act;
- 20 "(2) Reinstatement or other injunctive relief;
- "(3) Compensatory damages or punitive, including at least \$500 for every day an
- 22 employee who was denied access to paid leave was required to work; and
- 23 "(4) Reasonable attorney's fees and costs of enforcement.

"(d) An action may be maintained against any employer in a court of competent

2 jurisdiction by any one or more employees for and on behalf of himself or themselves and other

employees similarly situated. An employer who violated the provisions of this act shall be liable

4 to the employee or employees affected for:

"(1) Back pay for lost wages caused by the employer's violation of this act;

"(2) Reinstatement or other injunctive relief;

"(3) Compensatory damages or punitive damages, including at least \$500 for every day an employee who was denied access to paid leave was required to work; and

"(4) Reasonable attorney's fees and costs.

"(e) Where prompt compliance with this act or regulations enacted to implement this act is not forthcoming, the Mayor shall take any appropriate enforcement action to secure compliance, including initiating a civil action and, except where prohibited by another law, revoking or suspending any registration certificates, permits or licenses held or requested by the employer or person until the violation is remedied. In order to compensate the District for the costs of investigating and remedying the violation, the Department of Employment Services may also order the violating employer or person to pay to the District a sum of not more than \$500 for each day or portion thereof and for each employee or person as to whom the violation occurred or continued. The funds recovered by the District under this act shall be allocated to offset the costs of implementing and enforcing this act.

"(f) In any administrative or civil action brought under this act, the Mayor or court shall award interest on all amounts due and unpaid at the rate of interest specified in section 28-3302(b) or section 28-3302(c) of the D.C. Official Code.

i	"(g) Any money awarded to an employee under this act shall also constitute a debt to the
2	District and be enforced as a debt to the District as well as being independently enforceable by
3	the employee to whom the debt is owed.

- "(h) Failure to pay wages in conformance with this act shall constitute unpaid wages and be subject to all procedures, liquidated damages and penalties, and any other remedies or relief applicable under An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 976; D.C. Official Code § 32-1301 et seq.) .".
- (i) Section 16(1) (D.C. Official Code § 32-131.15(1)) is amended by striking the phrase "with the posting requirements".
 - (j) A new section 16a is added to read as follows:
 - "Sec. 16a. Public education and outreach.
- "The Department of Employment Services shall develop and implement a multilingual outreach program to inform employees, parents, and persons who are under the care of a health care provider about the availability of paid leave under this act. The program shall include the distribution of notices and other written materials in English and in other languages to all childcare and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers within the District."
 - Sec. 3. 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)).

- 1 Sec. 4. Effective date.
- 2 This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor,
- 3 action by the Council to override the veto), a 30-day period of Congressional review as provided
- 4 in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973
- 5 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia
- 6 Register.