

AN ACT
D.C. ACT 21-485

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 18, 2016

To establish a minimum work week for building service employees, to prohibit retaliation of the exercise of a right established by this act, to require an employer to post certain notices in the workplace, to authorize the Mayor to verify employer compliance, to establish penalties for a violation of this act, to provide for administrative action by the Mayor and for a hearing before an administrative law judge for violations of this act, and to authorize civil action for violations of this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Building Service Employees Minimum Work Week Act of 2016”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Covered employee” or “building services employee” means an individual performing janitorial services, building maintenance services, or other services in or around a covered location to maintain the repair, cleanliness, and overall quality of the covered location.

(2) “Covered employer” means an individual, group of individuals, partnership, association, corporation, business trust, society, firm, company, joint stock company, or other entity that at a covered location:

- (A) Directly employs a covered employee;
- (B) Contracts for the services of a covered employee; or
- (C) Subcontracts for the services of a covered employee.

(3) “Covered leave” means paid or unpaid temporary leave from work taken by a covered employee pursuant to:

- (A) Federal or District law;
- (B) An employee handbook; or
- (C) A written request voluntarily initiated by the covered employee.

(4) “Covered location” means an office building, commonly owned office park, or a commonly owned and managed group of buildings, with over 350,000 square feet of net rentable commercial office space. The term “covered location” excludes property owned or leased by a health-care facility licensed under the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.*), and affiliated subsidiaries.

(5) "Minimum work week" means the minimum number of compensated hours provided to a covered employee in any work week, including weeks in which the covered employee is taking covered leave.

(6) "Office park" means an area where a number of office buildings are together on landscaped grounds, which may include parking lots, parklike surroundings, and restaurants.

(7) "Work week" means a fixed regularly recurring period of 168 hours or 7 consecutive 24-hour periods.

Sec. 3. Minimum work week.

The minimum work week for a building services employee shall be 30 hours; except, that when a covered employee is taking covered leave, the leave shall count towards the 30-hour minimum work week; provided, that at each covered location up to 20% of the work hours scheduled for covered employees engaged in cleaning service may be preserved for part-time covered employees with a minimum shift of 4 hours per night and 20 hours per week per covered employee for up to a total of 10 part-time positions permitted per covered location.

Sec. 4. Prohibited acts.

It shall be a violation of this act for a covered employer to:

(1) Fail to provide a minimum work week as required by this act or a regulation issue pursuant to this act;

(2) Discharge, threaten, penalize, or in any other manner discriminate or retaliate against a covered employee because the covered employee has:

(A) Made, or is believed to have made, a complaint to the covered employer, the Mayor, the Attorney General for the District of Columbia, a federal employee, or District government employee that the covered employer has engaged in conduct that the covered employee, reasonably and in good faith, believes violates this act or a regulation issued pursuant to this act;

(B) Instituted, or will institute, a proceeding alleging a violation of this act;

(C) Provided information related to a possible violation of this act to the Mayor, the Attorney General for the District of Columbia, or a federal or District government employee;

(D) Testified, or will testify, in an investigation or proceeding being conducted pursuant to this act; or

(E) Exercised any other right protected by this act; or

(3) Hinder the Mayor in the enforcement of this act, including by failing to:

(A) Admit the Mayor to a covered location;

(B) Make available any record required to be made or retained by this act;

or

(C) Post a summary or copy of this act and of any applicable regulation, as required by section 5.

Sec. 5. Posting requirements.

(a)(1) A covered employer shall post and maintain in a conspicuous place a notice, which shall be prescribed by the Mayor and provided to each covered employer, that shall include excerpts or summaries of the pertinent provisions of this act and information about filing of a complaint pursuant to the act.

(2) A covered employer shall post every notice required to be posted by this act in English and all languages spoken by covered employees with limited or no-English proficiency, as defined in section 2 of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931).

(b) A covered employer who fails to comply with the posting requirements of this section shall be subject to the penalty set forth in section 8.

Sec. 6. Mayor's authority.

The Mayor shall have the authority to:

- (1) Investigate and ascertain the minimum work week of a covered employee;
- (2) Enter and inspect a covered location of a covered employer to:
 - (A) Inspect and copy:
 - (i) Books;
 - (ii) Registers;
 - (iii) Payrolls; or
 - (iv) Other records the Mayor considers necessary or appropriate; or
 - (B) Question a covered employee to ascertain whether the covered employer is in compliance with the requirements of this act;
- (3) Require a covered employer to provide a sworn statement pertaining to the employment of a covered employee regarding:
 - (A) Wages and hours; and
 - (B) Any other information pertaining to the employment of the covered employee that the Mayor considers necessary or appropriate to carry out the purposes of this act; and
- (4) Following an admission of a violation by a respondent to a complaint, conduct an audit or issue a subpoena to determine if the rights of covered employees other than the complainant have also been violated.

Sec. 7. Confidentiality of reported information.

To encourage reporting and protect personal information received pursuant to this act, the Mayor shall keep confidential, to the maximum extent authorized by law, the name and any other identifying information of a covered employee, or other person, reporting a violation of this act during the course of an investigation; provided, that with the authorization of the covered employee or other person, whichever is applicable, the Mayor may disclose the name of the covered employee or other person and such identifying information as necessary to conduct a hearing and enforce this act or other employee-protection law.

Sec. 8. Penalties.

(a)(1) Except as provided in paragraph (2) of this subsection, a covered employer who willfully violates the posting requirements of section 5 shall be assessed a civil penalty not to exceed \$100 for each day that the covered employer fails to post the notice; provided, that the total penalty shall not exceed \$500.

(2) No liability for failure to post the notice shall arise under this section if the Mayor has failed to provide the notice required by section 5 to the covered employer.

(b)(1) A covered employer who fails to comply with any of the requirements of this act, other than the posting requirements of section 5, shall be subject to a fine of not more than \$5,000 for each violation for each day that the violation continues.

(2) For the purposes of this subsection, each violation of a covered employee's right provided by this act shall constitute a separate violation of this act.

(c)(1) Except as provided in paragraph (2) of this subsection, the Mayor shall assess an administrative penalty against a covered employer for a violation of this act. In assessing the amount of the fine to be imposed pursuant to the following authorized penalties, the Mayor may consider factors the Mayor determines appropriate, including a covered employer's past history of violations of this act:

(A) For the first violation, a maximum fine of up to \$500; and

(B) For any subsequent violation, a maximum fine of up to \$1,000.

(2) No administrative penalty may be collected unless the Mayor provided a covered employer alleged to have violated this act:

(A) Notification of the violation;

(B) The amount of the administrative penalty that may be imposed; and

(C) An opportunity to request a hearing.

Sec. 9. Administrative action by the Mayor.

(a) Subject to the statute of limitations described in subsection (b) of this section, upon a request by a covered employee for administrative enforcement of this act, the Mayor shall investigate and make an initial determination regarding the alleged violation.

(b)(1) Except as provided in paragraph (3) of this subsection, an aggrieved covered employee ("complainant") shall file a signed complaint against a covered employer for failure to provide a minimum work week with the Mayor no later than 3 years after the last date upon which the alleged violation occurred.

(2) A complainant may recover only those amounts that became lawfully due and payable within the 3-year period before the date the complaint was filed; except, that if the alleged failure to provide a minimum work week is ongoing at the time of the filing of the complaint, the complainant may also seek recovery of those amounts that accrued during the pendency of the claim.

(3) The 3-year statute of limitations shall be tolled during any period that the covered employer had failed to provide the covered employee with actual or constructive notice of the covered employee's rights or on other equitable grounds.

(c) The complaint shall:

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(1) Set forth the facts upon which it is based with sufficient specificity to determine that an allegation of failure to provide a minimum work week has been made;
(2) Meet other criteria required in this section, or by regulations issued pursuant to this act;

(3) Be sworn to as true by the complainant; and
(4) Include, or be attached thereto, the following information:

(A) The complainant's name, address, and telephone number (or alternate address or telephone number if the complainant desires);

(B) Sufficient information to enable the Mayor to identify the covered employer through District records, such as the covered employer's:

- (i) Name;
- (ii) Business address;
- (iii) Motor vehicle license plate number; or
- (iv) Telephone number; and

(C) If not set forth in the statement of facts required by paragraph (1) of this subsection, an explanation of the alleged violations, which may include:

- (i) The approximate or actual dates the violations occurred;
- (ii) The estimated total amount of unpaid wages; and
- (iii) An explanation of how the estimated total amount of unpaid wages was calculated.

(d) The Mayor may, as the Mayor determines necessary or appropriate, request that the complainant amend a complaint considered insufficient, including to:

- (A) Cure technical defects or omissions;
- (B) Clarify or amplify allegations; or
- (D) More fully or adequately allege the charge set forth in the original complaint.

(e)(1) The Mayor shall mail the complaint and the written notices described in paragraph (2) of this subsection to the covered employer or, if more than one, to each covered employer ("respondent").

(2)(A) Notice to the respondent shall set forth the:

- (i) Damages, penalties, and other costs for which the respondent may be liable;
- (ii) Rights and obligations of the parties; and
- (iii) Process for contesting the complaint.

(B) Notice to covered employees shall state that an investigation by the Mayor is being conducted and provide information on how covered employees may participate in the investigation.

(f)(1) Upon receipt of the notice required by subsection (e)(2)(B) of this section, the respondent shall post the notice in a conspicuous place for a period of at least 30 days.

(2) Within 20 days from the date the complaint and written notices are mailed, the respondent shall:

- (A) Admit that the allegations in the complaint are true; or

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(B) Deny the allegations in the complaint and request that the Mayor make an initial determination regarding the allegations in the complaint.

(3) If a respondent admits the allegations, the Mayor shall issue an administrative order requiring the respondent to pay the unpaid wages due and, if any, other compensation, liquidated damages, and fine or penalty owed, and to cure the violation.

(4) If a respondent fails to respond to the allegations within 20 days as required by paragraph (2) of this subsection, the allegations in the complaint shall be deemed admitted and the Mayor shall issue an initial determination requiring the respondent to pay unpaid wages due and, if any, compensation, liquidated damages, and fine or penalty owed, and to cure the violation.

(5)(A) The Mayor shall issue an initial determination within 120 days after the date the complaint is received. The initial determination shall contain:

(i) A brief summary of the evidence considered;
(ii) The findings of fact;
(iii) The conclusions of law;
(iv) An order detailing the amount owed by the respondent or other relief, if any;

(v) The process by which to appeal the Mayor's determination or to seek other relief; and

(vi) A preliminary determination as to whether the complainant is entitled to additional unpaid earned wages due to other District laws, including the:

(I) Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-131.01 *et seq.*);

(II) Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D. C. Official Code § 2-220.01 *et seq.*);

(III) Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1001 *et seq.*); and

(IV) 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.*).

(B) The initial determination shall be provided to both parties.

(C) If the Mayor fails to issue an initial determination within 120 days after the date the complaint is received, the complainant shall have a right to request a formal hearing before an administrative law judge.

Sec. 10. Conciliation of dispute.

(a) The Mayor shall work with the parties in an attempt to conciliate a dispute pursuant to this act; provided, that any conciliation agreement entered into shall be between the respondent and the complainant, which shall be reproduced by the Mayor as an administrative order ("CAO").

(b) If the CAO is breached, the Mayor or the complainant may enforce the CAO pursuant to section 12.

Sec. 11. Hearing before administrative law judge.

(a) Within 30 days after the issuance of the initial determination or administrative order, other than an administrative order issued pursuant to section 10, either party may file for a formal hearing before an administrative law judge.

(b)(1) An administrative law judge shall:

(A) Except as provided in paragraph (2) of this subsection, schedule a hearing within 30 days after the date a request for the hearing was filed;

(B) Provide notice to the parties of the time and place of the hearing;
and

(C) Upon conclusion of the hearing, issue an order based on the findings.

(2) The administrative law judge may grant each party one discretionary continuance due to hardship or a scheduling conflict of up to 15 days, and any other request for good cause only.

(c)(1) If a respondent does not appear after having received notice of the hearing pursuant to this section, the administrative law judge shall proceed to hear proof of the complaint and render judgment accordingly.

(2) If a complainant does not appear after having received notice of the hearing pursuant to this section, the administrative law judge shall dismiss the complaint without prejudice.

(d)(1) The parties may:

(A) Appear at the hearing with or without counsel;

(B) Submit evidence;

(C) Cross-examine witnesses;

(D) Obtain the issuance of subpoenas; and

(E) Otherwise be heard.

(2) Testimony taken at the hearing, or given and received by telephone, shall be under oath, and a transcript shall be made available at cost to any individual, unless the case is sealed.

(3) The burden of proof by a preponderance of the evidence shall rest upon the complainant, but shall shift to the respondent if:

(A) A respondent failed to keep records of a covered employee's schedule of hours and hours worked, or records of the covered employee's compensation provided to the covered employee are:

(i) Imprecise;

(ii) Inadequate;

(iii) Missing;

(iv) Fraudulently prepared or presented; or

(v) Substantially incomplete; and

(B) A complainant presents evidence to show, as a matter of just and reasonable inference, as determined by the judge, the hours the complainant was scheduled and amount of work done.

(4)(A) If the burden of proof shifts to the respondent pursuant to paragraph 3 of this subsection, the respondent shall present compelling evidence:

- (i) Of an exemption from applicability of the minimum work week required by this act; and
- (ii) To negate the reasonableness of the inferences drawn from the complainant's evidence.

(B) If the respondent fails to meet the burden of proof, as required by subparagraph (A) of this paragraph, the administrative law judge shall award damages to the complainant based on the complainant's evidence and may award approximate damages as necessary.

(e)(1) Within 30 days after the conclusion of the hearing, the administrative law judge shall issue:

(A) A decision setting forth a brief summary of the evidence considered, findings of fact, and conclusions of law; and

(B) An order detailing the determined relief.

(2)(A) Relief may include:

- (i) All wages the covered employer would have paid the covered employee had the covered employer complied with this act;
- (ii) Compensation;
- (iii) Reasonable attorneys' fees and costs; and
- (iv) Liquidated damages.

(B) An administrative law judge may award in liquidated damages an amount of up to treble the amount of owed wages.

(3) The decision and order of the administrative law judge shall be a final administrative ruling. It shall be enforceable in a court of competent jurisdiction and reviewable as provided by applicable law.

Sec. 12. Enforcement of administrative order or conciliation agreement..

(a)(1) A respondent shall comply with the provisions of any order or conciliation agreement affording relief and shall furnish proof of compliance to the Mayor.

(2) If a respondent refuses or fails to comply with the administrative order or conciliation agreement, the Mayor or the complainant may record a lien and may sue in the Superior Court of the District of Columbia for a remedy, enforcement, or assessment or collection of a civil penalty; provided, that the Superior Court of the District of Columbia shall have no jurisdiction to adjudicate the merits of the underlying claim but shall be limited to enforcement of the administrative order or conciliation agreement.

(b)(1) The Mayor may, at the request of a covered employee, take an assignment in trust for the assigning covered employee of wages and join in a proceeding or action of such claims against the same covered employer as the Mayor considers appropriate.

(2) The Mayor shall have power to settle and adjust any such claim on the terms the Mayor considers just; provided, that no settlement for an amount less than the amount awarded by the administrative law judge shall be agreed to without the complainant's consent.

(3) The Mayor shall maintain regular contact with the complainant concerning the procedural status of any legal action brought under the assignment, and the complainant shall have the right to inquire about and receive information regarding the status of the legal action.

(c)(1) If a respondent fails to timely comply with an administrative order or conciliation agreement that has not been stayed, the Mayor shall:

(A) Assess an additional late fee equal to 10% of the total amount owed for each month any portion of the award and accrued late penalty remain unpaid;

(B) Require the respondent to post public notice of its failure to comply, in a form determined by the Mayor; and

(C) Consider any unpaid amount to be owed the District as past due restitution on behalf of a covered employee; and

(D) Suspend any licenses issued to the covered employer to do business in the District as set forth in subsection (d) of this section.

(2)(A) Penalty amounts, including civil penalties and late fees, and any wages, compensation, damages, interest, costs, or other fees awarded to a covered employee, or a representative of the covered employee, shall be a lien upon the real estate and personal property of the person who owes the foregoing.

(B) The lien shall take effect by operation of law on the day immediately following the due date for payment, and, unless dissolved by payment, shall as of that date be considered a tax due and owing to the District, which may be enforced through any procedure available for tax collection.

(d) The Mayor shall:

(1) Deny an application for a license to do business issued by the District if, during the 3-year period before the date of the application, the applicant admitted guilt or liability or had been found guilty or liable in any judicial or administrative proceeding of committing or attempting to commit a willful violation of this act;

(2) Suspend any license to do business issued by the District if the licensee has failed to comply with an administrative order issued or conciliation agreement entered into pursuant to this act; and

(3) Upon learning of a licensee's alleged lack of compliance with an administrative order issued or conciliation agreement entered into pursuant to this act, notify the licensee that its license shall be suspended in 30 days and remain suspended until the licensee provides proof that it is in compliance with the administrative order or conciliation agreement, whichever applies, including any requirements for accelerated payment, interest, or additional damages in the event of a breach; provided, that before a license may be suspended, the Mayor shall provide the licensee the opportunity to have a hearing pursuant to the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*).

Sec. 13. Representation.

Any person may be represented by counsel in any proceeding under this act. Any party, including corporate entities, as an alternative to counsel, may be assisted by a non-attorney

authorized by that party in accordance with section 2835 of Title 1 of the District of Columbia Municipal Regulations (1 DCMR § 2835), except where such representation is prohibited by law or disallowed by the administrative law judge for good cause.

Sec. 14. Subpoenas; noncompliance.

(a) Any party may request that a subpoena be issued by the administrative law judge.

(b) Witnesses summoned by subpoena shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the Superior Court of the District of Columbia; provided, that fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by that party.

(c) Within 10 days after service of a subpoena upon a person, the person may petition the administrative law judge to quash or modify the subpoena, which the administrative law judge shall grant, if the judge finds that:

(1) The subpoena requires appearance or attendance at an unreasonable time or place;

(2) The subpoena requires production of evidence that does not relate to the matter at issue;

(3) The subpoena does not describe with sufficient particularity the evidence to be produced;

(4) Compliance with the subpoena would be unduly onerous; or

(5) The subpoena fails for other good reason.

(d) In the case of a refusal to obey a subpoena, the administrative law judge or any party may seek enforcement of a subpoena issued under the authority of this act by filing a petition for enforcement in a court of competent jurisdiction. In the enforcement proceeding, the court may award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the enforcement order.

(e) A person who fails or neglects to attend a proceeding to which the person was duly called to testify or refuses to answer any lawful inquiry or demand to produce records, documents, or other evidence, without good cause, may be fined by a court of competent jurisdiction not more than the amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01) ("Criminal Fine Proportionality Act") or imprisoned not more than 60 days, or both.

(f) A person who makes or causes to be made a false entry or false statement of fact in any report, account, record, or other document submitted to an administrative law judge pursuant to a subpoena or other order or who willfully mutilates, alters, or by any other means falsifies any documentary evidence may be fined by a court of competent jurisdiction not more than the amount set forth in the Criminal Fine Proportionality Act or imprisoned not more than 60 days, or both.

Sec. 15. Costs and attorney's fees.

(a) In any action brought under this act, the administrative law judge shall allow a

prevailing plaintiff to recover the costs of the action from the defendant, including costs or fees of any nature and reasonable attorney's fees.

(b) In an administrative order in favor of a covered employee and in any proceeding to enforce an administrative order, the court shall award to each attorney for the covered employee an additional judgment for costs, including reasonable attorney's fees.

(c) If fees remain unpaid to the attorney at the time of any subsequent review, supplementation, or reconsideration of the fee award, the administrative law judge shall update the award to reflect the hours actually expended and the market rates in effect at that time. No reduction shall be made from this rate, or from the hours actually expended, except upon clear and convincing evidence that the reduction will serve the remedial purposes of this law.

(d) Costs shall also include expert witness fees, depositions fees, witness fees, juror fees, filing fees, certification fees, the costs of collecting and presenting evidence, and any other costs incurred in connection with obtaining, preserving, or enforcing the administrative order.

(e) The Mayor shall not be required to pay the filing fee or other costs or fees of any nature or to file bond or other security of any nature in connection with any action or proceeding under this act.

Sec. 16. Civil action.

(a) A covered employee aggrieved by a violation of this act may bring a civil action in the Superior Court of the District of Columbia and may be awarded such legal or equitable relief as may be appropriate to effectuate the purposes of this act, including without limitation:

(1) Reinstatement;

(2) Payment of lost wages totaling not less than the hourly rate of pay due to the covered employee but for the violation multiplied by the number of hours below the minimum work week that the covered employee was provided each work week during which a violation occurred;

(3) Actual medical costs incurred by the covered employee as a result of the violation;

(4) Liquidated damages in the amount of \$100 per day for each day the violation continued; and

(5) Reasonable attorney's fees and costs of the action to be paid by the defendant to a prevailing plaintiff.

(b) (1) An action to recover damages under this act may be maintained in the Superior Court of the District of Columbia by one or more covered employees aggrieved by a violation of this act or on behalf of a covered employee or covered employees who are similarly situated as long as at least one of the covered employees has exhausted all administrative remedies.

(2)(A) For the purposes of this subsection, 2 or more covered employees are similarly situated if they:

(i) Are or were employed by the same covered employer, whether concurrently or otherwise, at some point during the applicable statute of limitations period;

(ii) Allege one or more violations that raise similar questions as to

liability; and

(iii) Seek similar forms of relief.

(B) Covered employees alleging violations of this act shall not be considered dissimilar under this subsection solely because their claims seek damages that differ in amount or their job titles, or other means of classifying them differ in ways that are unrelated to their claims.

(c)(1) Except as provided in paragraph (2) of this subsection, an action commenced for a violation of this act on or after the applicability of this act shall be commenced within 3 years after the cause of action accrued or of the last occurrence if the cause of action is continuous, whichever is later, or the cause of action shall be forever barred.

(2) The 3-year statute of limitations shall be tolled:

(A) From the date the covered employee files an administrative complaint with the Mayor until the Mayor notifies the covered employee in writing that the administrative complaint has been resolved or the administrative complaint is withdrawn by the covered employee;

(B) During any period that the covered employer has failed to provide the covered employee with actual or constructive notice of the covered employee's rights; or

(C) On other equitable grounds.

Sec. 17. Rules.

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.

Sec. 18. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 19. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).