

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2016**

No. 131

Introduced by Council Members Rodriguez, Chin, Eugene, Lancman, Miller, Van Bramer, Levine, Dickens, Cabrera, Dromm, Reynoso, King, Kallos, Levin, Salamanca, Koslowitz, Menchaca, Cornegy, Espinal, Torres, Grodenchik, Lander, Palma, Rose, Richards, Crowley, Johnson, Williams, Cohen, Barron and Ulrich.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to a 90-day transition period for displaced food service workers

Be it enacted by the Council as follows:

Section 1. The administrative code of the city of New York is amended by adding a new section 22-508 to read as follows:

§ 22-508 *Food service workers. a. For purposes of this section, the following terms have the following meanings:*

Covered entity. The term “covered entity” means any person who enters into a food service contract for the provision of food service at premises located within the city.

Food service. The term “food service” means the on-site preparation, service and clean-up of food or beverages to persons.

Food service contract. The term “food service contract” means a contract for a term of at least 12 months between a covered entity and a food service contractor for the provision of food service that requires that:

(i) the food service contractor provide all food service workers;

(ii) the prices for food or beverages sold on the premises of the covered entity be subject to the review and agreement of the covered entity; and

(iii) the food service contractor reports the gross receipts or gross sales generated pursuant to the contract to the covered entity.

Food service contractor. The term “food service contractor” means any person who enters into a food service contract to provide food service to a covered entity.

Food service worker. The term “food service worker” means any person who has been employed by a food service contractor to provide food service pursuant to a food service contract on a full or part-time basis for at least 90 days immediately preceding any transition in employment subject to this section, provided that such term does not include persons who are managerial, supervisory or confidential employees, or persons regularly scheduled to work fewer than eight hours per week.

Former food service contractor. The term “former food service contractor” means any person who has entered into a food service contract with a covered entity prior to a termination of such contract.

Person. The term “person” means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ persons or enter into service contracts, but it does not include the city, the state of New York, the federal government any other governmental entity, or any individual or entity managing real property for a governmental entity.

Successor food service contractor. The term “successor food service contractor” means any person who has entered into a food service contract with a covered entity after the termination of a substantially similar food service contract by the covered entity.

b. Terminated food service contract. 1. No less than 15 calendar days before terminating any food service contract, a covered entity shall request the former food service contractor to provide to the successor food service contractor and the covered entity a full and accurate list containing the name, address, date of hire, and job category of each food service worker who provided the food service pursuant to such contract. The former food service contractor shall provide such list within 72 hours of receipt of the request by the covered employer. At the same time that the former food service contractor provides such list, the former food service contractor shall post the list in a notice to the food service workers that also sets forth the rights provided by this section, in the same location and manner that other statutorily required notices to employees are posted at the affected premises. Such notice shall also be provided to the food service workers' collective bargaining representative, if any.

2. Upon termination of a food service contract, the successor food service contractor shall retain those food service workers who provided the food service pursuant to such contract for a 90-day transition employment period.

3. If at any time the successor food service contractor determines that fewer food service workers are required to perform the food service pursuant to such contract than had been performing such service under the terminated food service contract, such successor food service contractor shall retain the food service workers by seniority within job classification; provided, that during such 90-day transition period, the successor food service contractor shall maintain a preferential hiring list of those food service workers not retained at the sites who shall be given a right of first refusal to any jobs within their classifications that become available during that period.

4. *Except as provided in paragraph 3 of this subdivision, during such 90-day period the successor food service contractor shall not discharge without cause a food service worker retained pursuant to this section.*

5. *At the end of the 90-day transition period, the successor food service contractor shall complete a written performance evaluation for each food service worker retained pursuant to this section. If a food service worker's performance during such 90-day period is satisfactory, the successor food service contractor shall offer such food service worker continued employment under the terms and conditions established by the successor food service contractor.*

c. Remedies. 1. A food service worker who has been discharged or not retained in violation of this section may bring an action in supreme court against a successor food service contractor for violation of any obligation imposed pursuant to this section.

2. The court shall have authority to order reinstatement of any food service worker who has been discharged or not retained in violation of this section.

3. If the court finds that by reason of a violation of any obligation imposed pursuant to subdivision b of this section, a food service worker has been discharged or not retained in violation of this section, it shall award:

(a) Back pay for each day during which the violation continues, calculated at a rate of compensation not less than the higher of (i) the average regular rate of pay received by the food service worker during the last three years of the food service worker's employment in the same job category; or (ii) the final regular rate received by the food service worker while employed either under the terminated food service contract or under the food service contract with the successor food service contractor, regardless of whether such food service worker obtained an alternate

source of income that was less than, equal to, or greater than the rate calculated pursuant to this subparagraph;

(b) The cost of benefits the successor food service contractor would have incurred for the food service worker under the successor food service contractor's benefit plan; and

(c) The food service worker's reasonable attorney's fees and costs.

4. In any such action, the court has authority to order the covered entity or former food service contractor to provide the successor food service contractor with the information required pursuant to subdivision b of this section.

d. The provisions of this section do not apply to a successor food service contractor that, on or before the effective date of the commencement of food service by such successor food service contractor, enters into a collective bargaining agreement covering the food service workers or agrees to assume, or to be bound by, the collective bargaining agreement of the former food service contractor covering such food service workers, provided that such collective bargaining agreement provides terms and conditions regarding the discharge or laying off of employees.

§ 2. This local law takes effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on October 13, 2016 and approved by the Mayor on October 31, 2016.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 131 of 2016, Council Int. No. 1011-A of 2015) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel