Committee on Consumer Affairs and Business Licensing

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# THE COUNCIL OF THE CITY OF NEW YORK

# COMMITTEE REPORT OF THE GOVERNMENTAL AFFAIRS Division

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**COMMITTEE ON CONSUMER AFFAIRS AND BUSINESS LICENSING**Hon. Andrew Cohen, Chair

##### **September 10, 2020**

**INT. NO. 2032:** By Council Members Cohen and Kallos (by request of the Mayor)

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring city employers to provide earned safe and sick time to employees

**INT. NO. 2049:** By Council Members Levine, Richards, Adams, Powers, Kallos, Salamanca, Reynoso, Ampry-Samuel, Lancman, Brannan, Rivera, Torres, Cabrera, Dromm, Grodenchik, Lander and Van Bramer

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to displaced hotel service workers and hotel service disruption notifications

1. **INTRODUCTION**

On September 10, the Committee on Consumer Affairs and Business Licensing, chaired by Council Member Andrew Cohen, will hold a remote hearing on two pieces of legislation: Introduction Bill Number 2032 (Int. 2032), in relation to requiring city employers to provide earned safe and sick time to employees; and Introduction Bill Number 2049 (Int. 2049), in relation to displaced hotel service workers and hotel service disruption notifications. The Committee has invited the Department of Consumer and Worker Protection (DCWP—formerly the Department of Consumer Affairs), union and workers’ groups, trade associations, business representatives and other members of the public to testify at the hearing.

1. **BACKGROUND**

**Int. 2049**

In late December of 2019, a new virus, SARS-CoV-2, was detected in Wuhan, China and by January 30, 2020 the World Health Organization (WHO) had declared that COVID-19, the disease caused by the SARS-CoV-2 virus, was now a Public Health Emergency of International Concern (PHEIC).[[1]](#footnote-1) SARS-CoV-2 is not the first virus to pose a serious threat to modern civilization. In 2003, the severe acute respiratory syndrome (SARS) was labelled the “first pandemic of the 21st century”, because it spread quickly across continents, infected more than 8,000 people and killed nearly 800.[[2]](#footnote-2) By comparison, COVID-19 has infected 26.6 million people across 213 countries, and has killed nearly 876,000 people as of September 4, 2020.[[3]](#footnote-3)

The ease with which the virus spreads has caused governments across the globe to shut-down businesses, schools, religious and cultural institutions, and mandate various levels of social isolation. In New York City, Broadway will be closed until at least the end of 2020, and the City’s leading museums are just beginning to allow visitors back, after being shuttered since mid-March. While this has helped to limit the spread of the virus, stay-at-home orders have had a catastrophic impact on the City’s economic markets, particularly the tourism and hospitality industries.

 In normal times, New York City is a mecca for tourists, and over the last ten years, the number of visitors to the City has increased exponentially.[[4]](#footnote-4) For example, in 2018, there were 65 million tourists and in 2019, there were a record 67 million visitors.[[5]](#footnote-5) That’s more than eight times the City’s 2019 population.[[6]](#footnote-6) However, with COVID-19 restrictions forcing people to stay home, the City’s tourism industry has diminished substantially. According to data from the City’s tourism agency New York and Company, hotel rates for the last week of August 2020 were down 72 percent compared to the seasonal rate in 2019.[[7]](#footnote-7)

 In 2017, the City’s Department of City Planning (DCP) published a report analyzing the trends in New York’s hotel industry. The report highlighted that over the previous ten years, the industry had grown by 42 percent in New York City, and that much of this growth had occurred in outer boroughs, mainly Brooklyn and Queens.[[8]](#footnote-8) At the time, New York’s hotel market was described as “very stable” and the City had the highest occupancy rate in the country, during the first quarter of 2017.[[9]](#footnote-9) Unfortunately, more recent analysis predicts that New York City will permanently lose 20 percent of its hotel rooms, due to the impact of the COVID-19 pandemic.[[10]](#footnote-10)

 At the end of 2019, and prior to the pandemic, New York City had 703 hotels operating approximately 138,000 rooms.[[11]](#footnote-11) This industry was valued at $45 billion and it employed an estimated 300,000 workers.[[12]](#footnote-12) With tourism coming to a virtual halt, however, the effects have been felt acutely by the hotel industry, their workers, and the State as a whole. For instance, the City and State are expected to lose around $1.3 billion in tax revenues, due to the downturn.[[13]](#footnote-13) The outlook for workers is similarly bleak. At the peak of the pandemic, during late March and April, nine in ten hotels furloughed workers and nationally, 7.5 million industry jobs were lost.[[14]](#footnote-14) Although things have improved, by August over half of the industry’s hotel workers had still not been re-instated. This meant that they were losing a national total of $1.7 billion in weekly earnings.[[15]](#footnote-15) Furthermore, given that only 38 percent of Americans surveyed reported that they are expecting to travel during 2020 (compared to a typical rate of 70 percent), it is unlikely that the industry will recover in the near future.[[16]](#footnote-16)

 According to Oxford Economics and the American Hotel and Lodging Association, hoteliers need an occupancy rate of about 50 percent if they have any likelihood of breaking even. While the data indicates modest improvements, the hotel industry is in dire straits. If hoteliers are unable to stay afloat, there is serious concern that they will be forced into bankruptcy or sell. While this may help the individual hotelier, this puts hotel workers in a precarious state, with little to no guarantee regarding the security of their job, let alone their wages, benefits and working conditions. Int. 2049 attempts to provide some assurances by granting hotel workers basic rights, should their employer sell their hotel.

**Int. 2032**

Since May 5, 2018, our city has had strong sick and safe leave protections in place for local workers.[[17]](#footnote-17) Under local law, employees who work more than 80 hours in a calendar year for an employer with five or more employees, are entitled to 40 hours of paid safe and sick leave per year.[[18]](#footnote-18) This also applies to domestic workers whose employer employs at least one domestic worker. For employees working for an employer with less than five employees, the 40 hours of safe and sick leave must still be provided, but the leave is unpaid.[[19]](#footnote-19)

On September 30, 2020, New York State’s sick leave law will go into effect. While the aim of the law is similar to New York City’s paid safe and sick leave law (PSSL), some of the provisions exceed the protections afforded at the local level. For example, under the new State law, employers with 100 or more employees must provide their workers with at least 56 hours of paid sick leave each year.[[20]](#footnote-20) If an employer has four or fewer employees and has a net income of less than $1 million for the previous tax year, the employer must provide 40 hours of unpaid sick leave to their workers. Employees are entitled to 40 hours of paid sick leave if their employer has either four or fewer employees and a net income of more than $1 million; or if their employer has between five and 99 employees.[[21]](#footnote-21)

 Int. 2032 will update the City’s PSSL to align with the changes at the State level.

1. **Legislative Analysis**

 **Int. 2032**

Int. 2032 would require employers of five or more employees, one or more domestic worker, or four or more employees and with a net income of more than $1 million; to provide 40 hours of paid safe and sick leave. Employers with four or fewer employees and income of less than $1 million are required to provide 40 hours of unpaid leave. Int. 2032 would also require New York City employers with 100 or more employees to provide those workers with 56 hours of paid safe and sick leave.

 Under Int. 2032, employers must provide new employees with a written notice of the employee’s safe and sick leave entitlements at the commencement of their employment, and must provide existing employees with this written notice within 30 days of the law’s effective date.

 Int. 2032 also updates the definition of domestic worker and makes explicit the definition of safe leave.

 Finally, Int. 2032 authorizes corporation counsel to bring a civil action against an employer who is engaged in a pattern and practice of violations, and the bill eliminates the 120-day waiting period and instead allows employees to use their sick and safe leave as soon as it is accrued.

 If passed, the bill would become effective September 30, 2020.

 **Int. 2049**

If enacted, Int. 2049 would establish a set of provisions to ensure that hotel workers are protected if their hotelier sells or closes their hotel. Fifteen days before a new hotel owner obtains control of the hotel, the previous owner must provide the successor with a list of employees, their contact details and their employment classification. At this time, the hotel owner must also post and/or provide employees with a list of their rights.

 Once new ownership commences, the new hotel owner must provide employment to the existing hotel workers for at least 90 days. Furthermore, the conditions of this employment must be at least the same as the conditions provided by the previous hotel owner. At the end of the 90-day period, the new employer is required to perform a written evaluation of the worker and, if the worker receives a satisfactory result, the new employer must offer them continued employment under the conditions set by the previous employer.

 If bargaining agreements that included procedures for the layoff of employees existed under the previous hotel ownership, the successor owner is not subject to the above provisions. The successor may also be excluded if they agree to abide by new bargaining agreements, provided these agreements include provisions for layoffs.

 Int. 2049 would also provide hotel workers who are not retained by new owners, a right of action against the successor owner. Awards can include back pay, the costs of benefits that would have been received under retention, and reimbursement of attorney fees.

 In addition to providing hotel workers with rights under changes of ownership, Int. 2049 also provides protections for consumers. Under Int. 2049, hotels must provide guests with at least 24 hours of notice if there will be a service disruption at the hotel. A service disruption includes:

* any construction at the hotel that creates excessive noise that has the potential to disturb guests in their rooms other than construction that is unplanned and intended to correct an emergency or other situation requiring immediate attention;
* any infestation verified by a licensed exterminator or governmental agency of hotel rooms;
* the temporary or permanent closure of any advertised amenity for a period of 24 hours or more, including but not limited to, pool, spa, shuttle service, or food and beverage service;
* the temporary or permanent unavailability of any advertised room appliances or technology for a period of 24 hours or more, including but not limited to, in-room refrigerators, or internet or Wi-Fi services;
* the temporary or permanent unavailability of any advertised or legally required accessibility features, including but not limited to, elevators, wheelchair lifts, ramps, or accessible bathrooms;
* the temporary or permanent unavailability of utilities, including but not limited to, gas, water, or electricity; or
* any strikes, lockouts, or picketing activity at or near a hotel which is related to such hotel.

 If a guest decides to cancel their booking, prior to check-in, the hotel cannot charge a fee or keep a deposit for the reservation, unless they have prominently posted notice of the service disruption prior to the reservation. If a guest has checked-in and they were not provided with notice of a service disruption prior to their check-in, they will be entitled to a full refund for the portion of their stay affected by the disruption.

 Violations accrued under this section range from $500 for a first offence and up to $5,000 for a fourth or subsequent offence within a two-year period beginning from the first offence.

 If passed, Int. 2049 would become effective immediately.

Int. No. 2032

By Council Members Cohen and Kallos (by request of the Mayor)

..Title

A Local Law to amend the administrative code of the city of New York, in relation to requiring city employers to provide earned safe and sick time to employees

..body

Be it enacted by the Council as follows:

Section 1. Chapter 8 of title 20 of the administrative code of the city of New York, sections 20-911, 20-912, 20-913, 20-914, 20-915, 20-916, subdivisions a and b of section 20-919, 20-922, section 20-912, as amended by a local law for the year 2020 amending the administrative code of the city of New York, relating to changing the name of the Department of Consumer Affairs to the Department of Consumer and Worker Protection, as proposed in introduction number 1609, and subdivision a of section 20-923 as amended by local law number 199 for the year 2017, sections 20-917, 20-918, subdivision b of section 20-923, and subdivisions a, d, e, and f of section 20-924 as added by local law number 46 for the year 2013, subdivision c of section 20-919, section 20-920, and subdivisions b and c of section 20-924 as amended by local law number 7 for the year 2014, and section 20-921 as amended by local law number 63 for the year 2018, is amended to read as follows:

CHAPTER 8

EARNED SAFE AND SICK TIME ACT

**§ 20-911 Short title.** This chapter shall be known and may be cited as the “Earned Safe and Sick Time Act.”

**§ 20-912 Definitions.** When used in this chapter, the following terms shall be defined as follows:

“Calendar year” shall mean a regular and consecutive twelve month period, as determined by an employer.

“Chain business” shall mean any employer that is part of a group of establishments that share a common owner or principal who owns at least thirty percent of each establishment where such establishments (i) engage in the same business or (ii) operate pursuant to franchise agreements with the same franchisor as defined in general business law section 681; provided that the total number of employees of all such establishments in such group is at least five.

“Child” shall mean a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.

“Commissioner” shall mean the [head of such office or agency as the mayor shall designate pursuant to section 20-a of the charter] commissioner of consumer and worker protection.

“Department” shall mean [such office or agency as the mayor shall designate pursuant to section 20-a of the charter] the department of consumer and worker protection.

“Domestic partner” shall mean any person who has a registered domestic partnership pursuant to section 3-240 of the code, a domestic partnership registered in accordance with executive order number 123, dated August 7, 1989, or a domestic partnership registered in accordance with executive order number 48, dated January 7, 1993.

“Domestic worker” shall mean any [“domestic worker” as defined in section 2 (16) of the labor law who is employed for hire within the city of New York for more than eighty hours in a calendar year who performs work on a full-time or part-time basis] person who provides care for a child, companionship for a sick, convalescing or elderly person, housekeeping, or any other domestic service in a home or residence whenever such person is directly and solely employed to provide such service by an individual or private household. The term “domestic worker” does not include any person who is employed by an agency whenever such person provides services as an employee of such agency, regardless of whether such person is jointly employed by an individual or private household in the provision of such services.

“Employee” shall mean any “employee” as defined in subdivision 2 of section 190 of the labor law who is employed for hire within the city of New York [for more than eighty hours in a calendar year] who performs work on a full-time or part-time basis, including work performed in a transitional jobs program pursuant to section 336-f of the social services law, but not including work performed as a participant in a work experience program pursuant to section 336-c of the social services law, and not including those who are employed by (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city of New York or any local government, municipality or county or any entity governed by section 92 of the general municipal law or section 207 of the county law.

“Employer” shall mean any “employer” as defined in subdivision (3) of section 190 of the labor law, b ut not including (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city of New York or any local government, municipality or county or any entity governed by general municipal law section 92 or county law section 207. In determining the number of employees performing work for an employer for compensation during a given week, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted, provided that where the number of employees who work for an employer for compensation per week fluctuates, business size may be determined for the current calendar year based upon the average number of employees who worked for compensation per week during the preceding calendar year, and provided further that in determining the number of employees performing work for an employer that is a chain business, the total number of employees in that group of establishments shall be counted.

“Family member” shall mean an employee’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent; the child or parent of an employee’s spouse or domestic partner; and any other individual related by blood to the employee; and any other individual whose close association with the employee is the equivalent of a family relationship.

“Family offense matter” shall mean an act or threat of an act that may constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision 1 of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, strangulation in the first degree, strangulation in the second degree, criminal obstruction of breathing or blood circulation, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree or coercion in the second degree as set forth in subdivisions 1, 2 and 3 of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household.

“Grandchild” shall mean a child of an employee's child.

“Grandparent” shall mean a parent of an employee's parent. “Health care provider” shall mean any person licensed under federal or New York state law to provide medical or emergency services, including, but not limited to, doctors, nurses and emergency room personnel.

“Hourly professional employee” shall mean any individual (i) who is professionally licensed by the New York state education department, office of professions, under the direction of the New York state board of regents under education law sections 6732, 7902 or 8202, (ii) who calls in for work assignments at will determining his or her own work schedule with the ability to reject or accept any assignment referred to them and (iii) who is paid an average hourly wage which is at least four times the federal minimum wage for hours worked during the calendar year.

“Human trafficking” shall mean an act or threat of an act that may constitute sex trafficking, as defined in section 230.34 of the penal law, or labor trafficking, as defined in section 135.35 and 135.36 of the penal law.

“Member of the same family or household” shall mean (i) persons related by consanguinity or affinity; (ii) persons legally married to or in a domestic partnership with one another; (iii) persons formerly married to or in a domestic partnership with one another regardless of whether they still reside in the same household; (iv) persons who have a child in common, regardless of whether such persons have been married or domestic partners or have lived together at any time; and (v) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.

“[Paid safe/sick] Safe/sick time” shall mean time that is provided by an employer to an employee that can be used for the purposes described in subdivisions a and b of section 20-914 of this chapter, whether or not compensation for that time is required pursuant to this chapter. [and is compensated at the same rate as the employee earns from his or her employment at the time the employee uses such time, except that an employee who volunteers or agrees to work hours in addition to his or her normal schedule will not receive more in paid safe/sick time compensation than his or her regular hourly wage if such employee is not able to work the hours for which he or she has volunteered or agreed even if the reason for such inability to work is one of the reasons in section 20-914 of this chapter. In no case shall an employer be required to pay more to an employee for paid safe/sick time than the employee’s regular rate of pay at the time the employee uses such safe/sick paid time, except that in no case shall the paid safe/sick time hourly rate be less than the hourly rate provided in subdivision 1 of section 652 of the labor law.]

“Parent” shall mean a biological, foster, step- or adoptive parent, or a legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child.

“Public disaster” shall mean an event such as fire, explosion, terrorist attack, severe weather conditions or other catastrophe that is declared a public emergency or disaster by the president of the United States, the governor of the state of New York or the mayor of the city of New York.

“Public health emergency” shall mean a declaration made by the commissioner of health and mental hygiene pursuant to subdivision d of section 3.01 of the New York city health code or by the mayor pursuant to section 24 of the executive law.

“Public service commission” shall mean the public service commission established by section 4 of the public service law.

[“Retaliation” shall mean any threat, discipline, discharge, demotion, suspension, reduction in employee hours, or any other adverse employment action against any employee for exercising or attempting to exercise any right guaranteed under this chapter.]

“Safe time” shall mean time that is provided by an employer to an employee that can be used for the purposes described in subdivision b of section 20-914 of this chapter, whether or not compensation for that time is required pursuant to this chapter.

“Sexual offense” shall mean an act or threat of an act that may constitute a violation of article 130 of the penal law.

“Sibling” shall mean an employee's brother or sister, including half-siblings, step-siblings and siblings related through adoption.

“Sick time” shall mean time that is provided by an employer to an employee that can be used for the purposes described in subdivision a of section 20-914 of this chapter, whether or not compensation for that time is required pursuant to this chapter.

“Spouse” shall mean a person to whom an employee is legally married under the laws of the state of New York.

“Stalking” shall mean an act or threat of an act that may constitute a violation of section 120.45, 120.50, 120.55, or 120.60 of the penal law.

**§ 20-913 Right to safe/sick time; accrual.** a. All employees have the right to safe/sick time pursuant to this chapter.

1. All employers that employ five or more employees,[and] all employers of one or more domestic workers, and any employer of four or fewer employees that had a net income of one million dollars or more during the previous tax year, shall provide paid safe/sick time to their employees in accordance with the provisions of this chapter. An employer shall pay an employee for paid safe/sick time at the employee’s regular rate of pay at the time the paid safe/sick time is taken, provided that the rate of pay shall not be less than the highest applicable rate of pay to which the employee would be entitled pursuant to subdivision 1 of section 652 of the labor law, or any other applicable federal, state, or local law, rule, contract, or agreement. Such rate of pay shall be calculated without allowing for any tip credit or tip allowance set forth in any federal, state, or local law, rule, contract, or agreement.

2. All employees not entitled to paid safe/sick time pursuant to this chapter shall be entitled to unpaid safe/sick time in accordance with the provisions of this chapter.

b. All employers shall provide a minimum of one hour of safe/sick time for every thirty hours worked by an employee[, other than a domestic worker who shall accrue safe/sick time pursuant to paragraph 2 of subdivision d of this section. Employers], provided that employers with ninety-nine or fewer employees shall not be required under this chapter to provide more than a total of forty hours of safe/sick time for an employee in a calendar year and further provided that employers with one hundred or more employees shall not be required under this chapter to provide more than a total of fifty-six hours of safe/sick time for an employee in a calendar year. For purposes of this subdivision, any paid days of rest to which a domestic worker as defined by this chapter is entitled pursuant to subdivision 1 of section 161 of the labor law shall count toward such forty hours of paid safe/sick time to which the domestic worker is entitled under this chapter to the extent that such paid days of rest may be used by the domestic worker for the same purposes and under the same conditions as safe/sick time under this chapter. Nothing in this chapter shall be construed to discourage or prohibit an employer from allowing the accrual of safe/sick time at a faster rate or the use of [sick] safe/sick time at an earlier date than this chapter requires.

c. An employer required to provide paid safe/sick time pursuant to this chapter who provides an employee with an amount of paid leave, including paid time off, paid vacation, paid personal days or paid days of rest required to be compensated pursuant to subdivision 1 of section 161 of the labor law, sufficient to meet the requirements of this section and who allows such paid leave to be used for the same purposes and under the same conditions as safe/sick time required pursuant to this chapter, is not required to provide additional paid safe/sick time for such employee whether or not such employee chooses to use such leave for the purposes included in [subdivision a of] section 20-914 of this chapter. An employer required to provide unpaid safe/sick time pursuant to this chapter who provides an employee with an amount of unpaid or paid leave, including unpaid or paid time off, unpaid or paid vacation, or unpaid or paid personal days, sufficient to meet the requirements of this section and who allows such leave to be used for the same purposes and under the same conditions as safe/sick time required pursuant to this chapter, is not required to provide additional unpaid safe/sick time for such employee whether or not such employee chooses to use such leave for the purposes set forth in [subdivision a of] section 20-914 of this chapter.

d. [1. For an employee other than a domestic worker, safe/sick] Safe/sick time as provided pursuant to this chapter shall begin to accrue at the commencement of employment or on the effective date of [this] the local law that created the right to such time, whichever is later. [and an] An employee shall be entitled to use safe/sick time [on the one hundred twentieth calendar day following commencement of his or her employment or on the one hundred twentieth calendar day following the effective date of this local law, whichever is later. After the one hundred twentieth calendar day of employment or after the one hundred twentieth calendar day following the effective date of this local law, whichever is later, such employee may use safe/sick time] as it is accrued[.], except that employees of any employer of four or fewer employees that had a net income of one million dollars or more during the previous tax year may use paid safe/sick time as it is accrued on or after January 1, 2021, and that employees of any employer of one hundred or more employees may use any accrued amount of paid safe/sick time that exceeds forty hours per calendar year on or after January 1, 2021.

[2. In addition to the paid day or days of rest to which a domestic worker is entitled pursuant to section 161(1) of the labor law, such domestic worker shall also be entitled to two days of paid safe/sick time as of the date that such domestic worker is entitled to such paid day or days of rest and annually thereafter, provided that notwithstanding any provision of this chapter to the contrary, such two days of paid safe/sick time shall be calculated in the same manner as the paid day or days of rest are calculated pursuant to the provisions of section 161(1) of the labor law.]

e. Employees who are [not covered by] exempt from the overtime requirements of New York state law or regulations, including the wage orders promulgated by the New York commissioner of labor pursuant to article 19 or 19-A of the labor law, shall be assumed to work forty hours in each work week for purposes of safe/sick time accrual unless their regular work week is less than forty hours, in which case [sick] safe/sick time accrues based upon that regular work week.

f. The provisions of this chapter do not apply to (i) work study programs under 42 U.S.C. section 2753, (ii) employees for the hours worked and compensated by or through qualified scholarships as defined in 26 U.S.C. section 117, (iii) independent contractors who do not meet the definition of employee under subdivision 2 of section 190 of the labor law, and (iv) hourly professional employees.

g. Employees shall determine how much [earned] accrued safe/sick time they need to use, provided that employers may set a reasonable minimum increment for the use of safe/sick time which shall not [to] exceed four hours per day.

h. [Except for domestic workers,] For employees of employers with ninety-nine or fewer employees, up to forty hours of unused safe/sick time as provided pursuant to this chapter shall be carried over to the following calendar year, and for employees of employers with one hundred or more employees, up to fifty-six hours of unused safe/sick time as provided pursuant to this chapter shall be carried over to the following calendar year; provided that no employer with ninety-nine or fewer employees shall be required to (i) allow the use of more than forty hours of safe/sick time in a calendar year or (ii) carry over unused paid safe/sick time if the employee is paid for any unused safe/sick time at the end of the calendar year in which such time is accrued and the employer provides the employee with an amount of paid safe/sick time that meets or exceeds the requirements of this chapter for such employee for the immediately subsequent calendar year on the first day of such year; and further provided that no employer with one hundred or more employees shall be required to (i) allow the use of more than fifty-six hours of safe/sick time in a calendar year or (ii) carry over unused paid safe/sick time if the employee is paid for any unused safe/sick time at the end of the calendar year in which such time is accrued and the employer provides the employee with an amount of paid safe/sick time that meets or exceeds the requirements of this chapter for such employee for the immediately subsequent calendar year on the first day of such year.

i. Nothing in this chapter shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee’s termination, resignation, retirement, or other separation from employment for accrued [sick] safe/sick time that has not been used.

j. If an employee is transferred to a separate division, entity or location in the city of New York, but remains employed by the same employer, such employee is entitled to all safe/sick time accrued at the prior division, entity or location and is entitled to retain or use all safe/sick time as provided pursuant to the provisions of this chapter. When there is a separation from employment and the employee is rehired within six months of separation by the same employer, previously accrued safe/sick time that was not used shall be reinstated and such employee shall be entitled to use such accrued safe/sick time at any time after such employee is rehired, provided that no employer shall be required to reinstate such safe/sick time to the extent the employee was paid for unused accrued safe/sick time prior to separation and the employee agreed to accept such pay for such unused safe/sick time.

**§ 20-914 Use of safe/sick time. a. Sick time.** 1. An employee shall be entitled to use sick time for absence from work due to:

(a) such employee's mental or physical illness, injury or health condition or need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventive medical care; or

(b) care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or who needs preventive medical care; or

(c) closure of such employee’s place of business by order of a public official due to a public health emergency or such employee’s need to care for a child whose school or childcare provider has been closed by order of a public official due to a public health emergency.

2. For an absence of more than three consecutive work days for sick time, an employer may require reasonable documentation that the use of sick time was authorized by this subdivision. For sick time used pursuant to this subdivision, documentation signed by a licensed health care provider indicating the need for the amount of sick time taken shall be considered reasonable documentation and an employer shall not require that such documentation specify the nature of the employee’s or the employee's family member’s injury, illness or condition, except as required by law. An employer shall reimburse an employee for all reasonable costs or expenses incurred for the purpose of obtaining such documentation for an employer.

**b. Safe time.** 1. An employee shall be entitled to use safe time for absence from work due to any of the following reasons when the employee or [a] employee’s family member has been the victim of domestic violence pursuant to subdivision thirty-four of section two hundred ninety-two of the executive law, a family offense matter, sexual offense, stalking, or human trafficking:

(a) to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;

(b) to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee’s family members from future family offense matters, sexual offenses, stalking, or human trafficking;

(c) to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;

(d) to file a complaint or domestic incident report with law enforcement;

(e) to meet with a district attorney’s office;

(f) to enroll children in a new school; or

(g) to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic health or safety of the employee or the employee’s family member or to protect those who associate or work with the employee.

2. For an absence of more than three consecutive work days for safe time, an employer may require reasonable documentation that the use of safe time was authorized by this subdivision. For safe time used pursuant to this subdivision, documentation signed by an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider from whom the employee or that employee's family member has sought assistance in addressing domestic violence, family offense matters, sex offenses, stalking, or human trafficking and their effects; a police or court record; or a notarized letter from the employee explaining the need for such time shall be considered reasonable documentation and an employer shall not require that such documentation specify the details of the domestic violence, family offense matter, sexual offense, stalking, or human trafficking. An employer shall reimburse an employee for all reasonable costs or expenses incurred for the purpose of obtaining such documentation for an employer.

c.  An employer may require reasonable notice of the need to use safe/sick time. Where such need is foreseeable, an employer may require reasonable advance notice of the intention to use such safe/sick time, not to exceed seven days prior to the date such safe/sick time is to begin. Where such need is not foreseeable, an employer may require an employee to provide notice of the need for the use of safe/sick time as soon as practicable.

d. Nothing herein shall prevent an employer from requiring an employee to provide written confirmation that an employee used safe/sick time pursuant to this section.

e. An employer shall not require an employee, as a condition of taking safe/sick time, to search for or find a replacement worker to cover the hours during which such employee is utilizing time.

f. Nothing in this chapter shall be construed to prohibit an employer from taking disciplinary action, up to and including termination, against a worker who uses safe/sick time provided pursuant to this chapter for purposes other than those described in this section.

**§ 20-915 Changing schedule.** Upon mutual consent of the employee and the employer, an employee who is absent for a reason listed in subdivision a of section 20-914 of this chapter may work additional hours during the immediately preceding seven days if the absence was foreseeable or within the immediately subsequent seven days from that absence without using safe/sick time to make up for the original hours for which such employee was absent, provided that an adjunct professor who is an employee at an institute of higher education may work such additional hours at any time during the academic term. An employer shall not require such employee to work additional hours to make up for the original hours for which such employee was absent or to search for or find a replacement employee to cover the hours during which the employee is absent pursuant to this section. If such employee works additional hours, and such hours are fewer than the number of hours such employee was originally scheduled to work, then such employee shall be able to use safe/sick time provided pursuant to this chapter for the difference. Should the employee work additional hours, the employer shall comply with any applicable federal, state or local labor laws.

**§ 20-916 Collective bargaining agreements**.a. The provisions of this chapter shall not apply to any employee covered by a valid collective bargaining agreement if (i) such provisions are expressly waived in such collective bargaining agreement and (ii) such agreement provides for a comparable benefit for the employees covered by such agreement in the form of paid days off; such paid days off shall be in the form of leave, compensation, other employee benefits, or some combination thereof. Comparable benefits shall include, but are not limited to, vacation time, personal time, safe/sick time, and holiday and Sunday time pay at premium rates.

b. Notwithstanding subdivision a of this section, the provisions of this chapter shall not apply to any employee in the construction or grocery industry covered by a valid collective bargaining agreement if such provisions are expressly waived in such collective bargaining agreement.

**§ 20-917 Public disasters.** In the event of a public disaster, the mayor may, for the length of such disaster, suspend the provisions of this chapter for businesses, corporations or other entities regulated by the public service commission.

**§ 20-918 Retaliation and interference prohibited.** a. No [employer] person shall [engage in retaliation or threaten retaliation against an employee for exercising or attempting to exercise any right provided pursuant to this chapter, or] interfere with any investigation, proceeding or hearing pursuant to this chapter. [The protections of this chapter shall apply to any person who mistakenly but in good faith alleges a violation of this chapter. Rights under this chapter shall include, but not be limited to, the right to request and use sick time, file a complaint for alleged violations of this chapter with the department, communicate with any person about any violation of this chapter, participate in any administrative or judicial action regarding an alleged violation of this chapter, or inform any person of his or her potential rights under this chapter.]

b. No person shall take any adverse action against an employee that penalizes an employee for, or is reasonably likely to deter an employee from, exercising or attempting to exercise rights under this chapter or interfere with an employee's exercise of rights under this chapter and implementing rules.

c. Adverse actions include, but are not limited to, threats, intimidation, discipline, discharge, demotion, suspension, harassment, discrimination, reduction in hours or pay, informing another employer of an employee’s exercise of rights under this chapter, blacklisting, and maintenance or application of an absence control policy that counts protected leave for safe/sick time as an absence that may lead to or result in an adverse action. Adverse actions include actions related to perceived immigration status or work authorization.

d. An employee need not explicitly refer to a provision of this chapter or implementing rules to be protected from an adverse action.

e. The protections of this section shall apply to any person who mistakenly but in good faith asserts their rights or alleges a violation of this chapter.

f. A causal connection between the exercise, attempted exercise, or anticipated exercise of rights protected by this chapter and implementing rules and an employer’s adverse action against an employee or a group of employees may be established by indirect or direct evidence.

g. For purposes of subdivision b of this section, a violation is established when it is shown that a protected activity was a motivating factor for an adverse action, whether or not other factors motivated the adverse action.

**§ 20-919 Notice of rights.** a. 1. An employer shall provide an employee [either at the commencement of employment or within thirty days of the effective date of this section, whichever is later,] with written notice of such employee’s right to safe/sick time pursuant to this chapter, including the accrual and use of safe/sick time, the calendar year of the employer, and the right to be free from retaliation and to [bring] file a complaint [to] with the department. Such notice shall be in English and the primary language spoken by that employee, provided that the department has made available a translation of such notice in such language pursuant to subdivision b of this section. Such notice [may]shall also be conspicuously posted at an employer’s place of business in an area accessible to employees.

2. [Notices provided to employees pursuant to this section on and after the effective date of this paragraph shall in addition inform employees of their right to safe time under this chapter. Employers shall give employees who have already received notice of their right to sick time pursuant to this section notice of their right to safe time within thirty days of the effective date of this paragraph.] Such notice shall be provided to each employee at the commencement of employment. For employees who were already employed prior to the effective dates of provisions of this chapter establishing their right to safe/sick time, such notice shall be provided within thirty days of the effective date of the local law that established each such right.

b. The department shall create and make available notices that contain the information required pursuant to subdivision a of this section concerning [sick] safe/sick time [and safe time] and such notices shall allow for the employer to fill in applicable dates for such employer's calendar year. Such notices shall be posted in a downloadable format on the department's website in Chinese, English, French-Creole, Italian, Korean, Russian, Spanish and any other language deemed appropriate by the department.

c. The amount of safe/sick time accrued and used during a pay period and an employee’s total balance of accrued safe/sick time shall be noted on a pay statement or other form of written documentation provided to the employee each pay period.

d. Any person or entity that willfully violates the notice requirements of this section shall be subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice pursuant to this section.

**§ 20-920 Employer records.** Employers shall make and retain records documenting such employer’s compliance with the requirements of this chapter for a period of three years unless otherwise required pursuant to any other law, rule or regulation, and shall allow the department to access such records, with appropriate notice and at a mutually agreeable time of day, in furtherance of an investigation conducted pursuant to this chapter.

**§ 20-921 Confidentiality and nondisclosure.** An employer may not require the disclosure of details relating to an employee’s or his or her family member’s medical condition or require the disclosure of details relating to an employee’s or his or her family member’s status as a victim of domestic violence, family offenses, sexual offenses, stalking, or human trafficking as a condition of providing safe/sick time under this chapter. Health information about an employee or an employee’s family member, and information concerning an employee’s or his or her family member’s status or perceived status as a victim of domestic violence, family offenses, sexual offenses, stalking or human trafficking obtained solely for the purposes of utilizing safe/sick time pursuant to this chapter, shall be treated as confidential and shall not be disclosed except by the affected employee, with the written permission of the affected employee or as required by law. Provided, however, that nothing in this section shall preclude an employer from considering information provided in connection with a request for safe time in connection with a request for reasonable accommodation pursuant to subdivision 27 of section 8-107.

**§ 20-922 Encouragement of more generous policies; no effect on more generous policies.** a. Nothing in this chapter shall be construed to discourage or prohibit the adoption or retention of a safe time or sick time policy more generous than that which is required herein.

b. Nothing in this chapter shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous safe time or sick time to an employee than required herein.

c. Nothing in this chapter shall be construed as diminishing the rights of public employees regarding safe time or sick time as provided pursuant to federal, state or city law.

**§ 20-923 Other legal requirements.** a. This chapter provides minimum requirements pertaining to safe time and sick time and shall not be construed to preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of safe [leave or] time or sick [leave or] time, whether paid or unpaid, or that extends other protections to employees.

b. Nothing in this chapter shall be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation, nor shall anything in this chapter be construed to diminish or impair the rights of an employee or employer under any valid collective bargaining agreement.

c. Where section 196-b of the labor law, or any regulation issued thereunder, sets forth a standard or requirement for minimum hour or use of safe/sick time that exceeds any provision in this chapter, such standard or requirement shall be incorporated by reference and shall be enforceable by the department in the manner set forth in this chapter and subject to the penalties and remedies set forth in the labor law.

**§ 20-924 Enforcement and penalties**.a. The department shall enforce the provisions of this chapter. In effectuating such enforcement, the department shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this chapter and investigate complaints received by the department in a timely manner. The department may open an investigation upon receipt of a complaint or on its own initiative.

b. Any person alleging a violation of this chapter shall have the right to file a complaint with the department within two years of the date the person knew or should have known of the alleged violation. The department shall maintain confidential the identity of any [complainant] natural person providing information relevant to enforcement of this chapter unless disclosure of such [complainant’s] person’s identity is necessary to the department for resolution of [the] its investigation or otherwise required by federal or state law. The department shall, to the extent practicable, notify such [complainant] person that the department will be disclosing his or her identity prior to such disclosure.

c. Upon receiving a complaint alleging a violation of this chapter, the department shall investigate such complaint [and attempt to resolve it through mediation]. Within [thirty] fourteen days of written notification of [a complaint] an investigation by the department, the person or entity under investigation [identified in the complaint] shall provide the department with a written response and such other information as the department may request. The department shall keep complainants reasonably notified regarding the status of their complaint and any resultant investigation. If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the department believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation. The commissioner shall prescribe the form and wording of such notices of violation. The notice of violation shall be returnable to the administrative tribunal authorized to adjudicate violations of this chapter.

d. The department shall have the power to impose penalties provided for in this chapter and to grant [an] each and every employee or former employee all appropriate relief. Such relief shall include: (i) for each instance of [sick] safe/sick time taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this chapter or two hundred fifty dollars, whichever is greater; (ii) for each instance of [sick] safe/sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker, or for each instance an employer requires an employee to work additional hours without the mutual consent of such employer and employee in violation of section 20-915 of this chapter to make up for the original hours during which such employee is absent pursuant to this chapter: five hundred dollars; (iii) for each [instance of unlawful retaliation] violation of section 20-918 not including discharge from employment: full compensation including wages and benefits lost, five hundred dollars and equitable relief as appropriate; [and] (iv) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, two thousand five hundred dollars and equitable relief, including reinstatement, as appropriate; and (v) for each employee covered by an employer’s official or unofficial policy or practice of not providing or refusing to allow the use of accrued safe/sick time in violation of section 20-913, five hundred dollars.

e. Any entity or person found to be in violation of the provisions of sections 20-913, 20-914, 20-915 or 20-918 of this chapter shall be liable for a civil penalty payable to the city not to exceed five hundred dollars for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed seven hundred [and] fifty dollars for the second violation and not to exceed one thousand dollars for each succeeding violation. Penalties shall be imposed on a per employee basis.

f. The department shall annually report on its website the number and nature of the complaints received pursuant to this chapter, the results of investigations undertaken pursuant to this chapter, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this chapter, and the average time for a complaint to be resolved pursuant to this chapter.

**§ 20-924.1 Enforcement by the corporation counsel.** The corporation counsel or such other persons designated by the corporation counsel on behalf of the department may initiate in any court of competent jurisdiction any action or proceeding that may be appropriate or necessary for the enforcement of any order issued by the department pursuant to this chapter or for the correction of any violation issued pursuant to section 20-924, including actions to mandate compliance with the provisions of such order, secure permanent injunctions, enjoining any acts or practices that constitute such violation, mandating compliance with the provisions of this chapter or such other relief as may be appropriate.

**§ 20-924.2 Civil action by corporation counsel for pattern or practice of violations. a. Cause of action.** 1. Where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of this chapter, the corporation counsel may commence a civil action on behalf of the city in a court of competent jurisdiction.

2. The corporation counsel shall commence such action by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief.

3. Such action may be commenced only by the corporation counsel or such other persons designated by the corporation counsel.

4. Nothing in this section prohibits the department from exercising its authority under section 20-924, provided that a civil action pursuant to this section shall not have previously been commenced.

**b. Investigation.** The corporation counsel may initiate any investigation to ascertain such facts as may be necessary for the commencement of a civil action pursuant to subdivision a of this section, and in connection therewith shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as are deemed necessary.

**c. Civil penalties and relief for employees.** In any civil action commenced pursuant to subdivision a of this section, the trier of fact may impose a civil penalty of not more than $15,000 for a finding that an employer has engaged in a pattern or practice of violations of this chapter. Any civil penalty so recovered shall be paid into the general fund of the city. The trier of fact may, in addition, award relief of up to $500 to each employee covered by an employer’s official or unofficial policy or practice of not providing or refusing to allow the use of earned time in violation of section 20-913.

 § 2. This local law takes effect on September 30, 2020, provided that the commissioner of consumer and worker protection may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, prior to such effective date.

LS 16136

Int. No. 2049

By Council Members Levine, Richards, Adams, Powers, Kallos, Salamanca, Reynoso, Ampry-Samuel, Lancman, Brannan, Rivera, Torres, Cabrera, Dromm, Grodenchik, Lander, Van Bramer, Cumbo and Moya

..title

A Local Law to amend the administrative code of the city of New York, in relation to displaced hotel service workers and hotel service disruption notifications

..Body

Be it enacted by the Council as follows:

Section 1. Chapter 5 of title 22 of the administrative code of the city of New York is amended to add a new section 22-510 to read as follows:

§ 22-510 Displaced hotel service workers. a. Definitions. For the purposes of this subchapter, the following terms have the following meanings:

Affected hotel. The term “affected hotel” means the hotel or discrete portion of the hotel that has been the subject of the change in control or a change in controlling interest or identity.

Change in control. The term “change in control” means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets used in the operation of a hotel or a discrete portion of the hotel. A change in control shall be defined to occur on the date of execution of the document effectuating such change.

Change in controlling interest or identity. The term “change in controlling interest or identity” means (i) any sale, assignment, transfer, contribution, or other disposition of a controlling interest, including by consolidation, merger, or reorganization, of a hotel employer or any person who controls a hotel employer; or (ii) any other event or sequence of events, including a purchase, sale, lease, termination of a management contract or lease, that causes the identity of the hotel employer at a hotel to change. A change in controlling interest or identity shall be defined to occur on the date of execution of the document effectuating such change.

Eligible hotel service employee. The term “eligible hotel service employee” means a hotel service employee employed by a covered employer.

Former hotel employer. The term "former hotel employer" means any hotel employer who owns, controls, or operates a hotel prior to a change in control or change in controlling interest or identity of the hotel or of a discrete portion of the hotel that continues to operate as a hotel after such change.

Hotel. The term “hotel” means a transient hotel as defined in section 12-10 of the New York city zoning resolution.

Hotel employer. The term “hotel employer” means any person who owns, controls, or operates a hotel, and includes any person or contractor who, in a managerial, supervisory, or confidential capacity, employs hotel service employees.

Hotel service. The term “hotel service” means work performed in connection with the operation of a hotel.

Hotel service employee. The term "hotel service employee" means any person employed to perform a hotel service during a 365-day period immediately preceding any transition in employment subject to this section or for such an extended period for which a hotel service employee retains recall rights under the incumbent hotel employers collective bargaining agreement except for persons who are managerial, supervisory, or confidential employees, or who otherwise exercise control over the management of the hotel.

Hotel service employee retention period. The term “hotel service employee retention period” means the period of time beginning on the date of a change in control or change in controlling interest or identity and extending to ninety days from the first date that an affected hotel is open to the public after such change.

Person. The term "person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, a trustee in bankruptcy or a receiver, or other entity that may employ persons or enter into service contracts.

Successor hotel employer. The term "successor hotel employer" means a hotel employer who owns, controls, or operates a hotel after a change in control or change in controlling interest or identity of the hotel or of a discrete portion of the hotel that continues to operate as a hotel after such change.

 b. Hotel service employee retention. 1. No less than 15 days before a change in control or change in controlling interest or identity, a former hotel employer shall provide the successor hotel employer with a full and accurate list containing the name, address, date of hire, and employment classification of each hotel service employee employed at the hotels covered by the terminated contract. At the same time that the former hotel employer provides such list, the former hotel employer shall post such list in a notice to the hotel service employees 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 hotel. If such hotel is not open to the public, such notice shall be transmitted in the same manner as any offer of employment made pursuant to paragraph 2 of this subdivision. Such notice shall also be provided to the employees' collective bargaining representative, if any.

2. A successor hotel employer shall, during the hotel worker retention period, offer each eligible hotel service employee employment for no less than 90 days. Such offers shall be made in writing and shall remain open for at least 10 business days from the date of such offer.

3. An eligible hotel service worker retained pursuant to this section shall be employed under terms and conditions substantially equivalent or more favorable to employee than those of the incumbent hotel employer, or as required by law, and shall not be discharged except for good cause based on individual performance or conduct.

3. If at any time during the hotel service employee retention period the successor hotel employer determines that fewer hotel service employees are required than by the former hotel employer, the successor hotel employer shall retain eligible hotel service workers pursuant to the terms of a relevant collective bargaining agreement, if any, or by seniority and experience within each job classification, to the extent such classifications exist.

4.  A successor hotel employer shall retain written verification of each offer of employment made pursuant to paragraph 2 of this subdivision. Such verification shall include the name, address, date of hire, and job classification of the eligible hotel service employee to whom the offer was made. A successor hotel employer shall retain the required verification for no less than three years from the date the offer is made.

5. At the end of the hotel service employee retention period, the successor hotel employer, shall perform a written performance evaluation for each hotel service employee retained pursuant to this section. If such employee's performance during such 90-day transition period is satisfactory, the successor hotel employer shall offer such employee continued employment under the terms and conditions established by the successor hotel employer. A successor hotel employer shall retain the written performance evaluation required under this subsection for no less than three years from the date it is issued.

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

2. The court shall have authority to order preliminary and permanent equitable relief, including, but not limited to, reinstatement of any employee who has been discharged or not retained in violation of this section. If the court finds that by reason of a violation of any obligation imposed pursuant to subdivision b of this section, a hotel service employee has been discharged or not retained in violation of this section, it shall award:

(i) back pay, and an equal amount as liquidated damages, for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of (1) the average regular rate of pay received by the employee during the last three years of the employee's employment in the same occupation classification; or (2) the final regular rate received by the employee. Back pay shall apply to the period commencing with the date of the discharge or refusal-to-retain by the successor hotel employer through the effective date of any offer of instatement or reinstatement of the employee;

(ii) costs of benefits the successor hotel service employer would have incurred for the employee under such employee's benefit plan; and

(iii) the hotel service employee's reasonable attorney's fees and costs.

4. In any such action, the court shall have authority to order the covered employer or the former hotel service contractor, as applicable, to provide any information required pursuant to subdivision b of this section.

d. Applicability. This section shall not apply to:

(i) any successor hotel employer that, on or before the change of control or change in controlling interest or identity, agrees to assume, or to be bound by, the collective bargaining agreement of the former hotel employer, provided that the collective bargaining agreement provides terms and conditions for the discharge or laying off of employees;

(ii) if there was no existing collective bargaining agreement as described in paragraph 1 of this subdivision, any successor hotel employer that agrees, on or before the change of control or change in controlling interest or identity, to enter into a new collective bargaining agreement covering its hotel service employees, provided that the collective bargaining agreement provides terms and conditions for the discharge or laying off of employees; or

(iii) any former hotel employer that obtains a written commitment from a successor hotel employer that such successor hotel employer’s hotel service employees will be covered by a collective bargaining agreement falling within paragraphs 1 and 2 of this subdivision.

e. Records 1. Each hotel employer shall maintain for three years, for each employee and former employee, by name, a record showing the employee’s regularly hourly rate of pay for each week of the employee’s employment.

2. A hotel shall make an employee’s or former employee’s records available in full to such employee or former employee upon request, and make all employees’ and former employees’ records available in full to the department for inspection and copying, in accordance with the law, upon the issuance of an administrative subpoena.

§ 2. Chapter 5 of tile 20 of the administrative code of the city of New York is amended by adding a new subchapter 23 to read as follows:

SUBCHAPTER 23

HOTEL SERVICE DISRUPTIONS

§ 20-850. Definitions. For the purposes of this section, the following terms have the following meanings:

Hotel. The term “hotel” means a transient hotel as defined in section 12-10 of the New York city zoning resolution.

Service disruption. The term “service disruption” means the occurrence of any of the following:

(i) any construction at such hotel that creates excessive noise that has the potential to disturb guests in their rooms other than construction that is unplanned and intended to correct an emergency or other situation requiring immediate attention;

(ii) any infestation verified by a licensed exterminator or governmental agency of hotel rooms by bed bugs, lice, or other insects or vermin that are capable of spreading disease and/or being carried, including on one’s person, that has not been remedied by a licensed exterminator;

(iii) the temporary or permanent closure of any advertised amenity for a period of 24 hours or more, including but not limited to, pool, spa, shuttle service, or food and beverage service;

(iv) the temporary or permanent unavailability of any advertised room appliances or technology for a period of 24 hours or more, including but not limited to, in-room refrigerators, or internet or Wi-Fi services;

(v) the temporary or permanent unavailability of any advertised or legally required accessibility features, including but not limited to, elevators, wheelchair lifts, ramps, or accessible bathrooms;

(vi) the temporary or permanent unavailability of utilities, including but not limited to, gas, water, or electricity; or

(vii) any strikes, lockouts, or picketing activity at or near a hotel which is related to such hotel.

§ 20-851. Notification. a. Within 24 hours of becoming aware of a service disruption, a hotel shall notify each guest who has reserved or is seeking to reserve a room or entered into a booking or agreement to use hotel services that would be affected by such service disruption, and any vendor with which the hotel has an arrangement for third-party room reservations, except in cases where commencement of a service disruption make it impractical to provide timely notification in which case such notification shall be made as soon as practicable. Such notification shall describe: (i) the nature of the service disruption, and the extent of its effect on reservations, bookings, and agreements to use hotel services; and (ii) the right to cancel the reservation, booking, or agreement to use hotel services without the imposition of any fee, penalty or other charge, and obtain a full refund of any deposit paid.

 b. If such notification is included in a communication containing other information, the notification shall be in a significantly larger font and different color than the remainder of the communication, as set forth by rule by the commissioner.

c. Hotels shall not impose any fee, penalty or other charge, nor retain any deposit, in the event a guest or customer, prior to checking-in, cancels a reservation, booking, or agreement to use hotel services that is affected by a service disruption, unless the hotel provided prominent and clear notice of such service disruption, pursuant to subdivision b, prior to accepting such reservation, booking, or agreement.

d. A guest shall be provided a full refund of the amount paid for any portion of a stay affected by a service disruption, including one which arises only after the guest has checked-in, unless the hotel provided prominent and clear notice to the guest of such service disruption, pursuant to subdivision b, prior to the guest’s arrival at the hotel.

§ 20-852. Penalties. a. A hotel owner who violates or causes another person to violate a provision of this subchapter or any rule promulgated pursuant to such subchapter, shall be subject to a civil penalty as follows:

1. for the first violation, a civil penalty of $500;

2. for the second violation issued for the same offense within a period of two years of the date of the first violation, a civil penalty of $1,000;

3. for the third violation issued for the same offense within a period of two years of the date of the first violation, a civil penalty of $2,500; and

4. for the fourth and any subsequent violations issued for the same offense within a period of two years of the date of the first violation, a civil penalty of $5,000.

b. A proceeding to recover any civil penalty pursuant to this section shall be commenced by the service of a summons or notice of violation which shall be returnable to the office of administrative trials and hearings.

§ 3. This local law takes effect immediately.

LS 11436

8/25/20 5:07PM

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