Committee on Civil Service and Labor

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The Council of the City of New York

COMMITTEE REPORT OF THE HUMAN SERVICES DIVISION

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COMMITTEE ON CIVIL SERVICE AND LABOR

Hon. I. Daneek Miller, *Chair*

December 15, 2020

**PROPOSED INT. NO. 1396-A:** By Council Members Adams, Lander, Moya, Ayala, Cabrera, Brannan, Lancman, Eugene, Levine, Menchaca, Rosenthal, Kallos, Reynoso, Van Bramer, Salamanca, Chin, Cohen, Rivera, Treyger, Levin, Ampry-Samuel, King, Cumbo, Torres, Koslowitz, Rodriguez, Richards, Constantinides, Gibson, Powers, Vallone, Rose, Louis and Cornegy

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to fast food employee layoffs

**ADMINISTRATIVE CODE:** Amends section 20-1271 of the administrative code

**PROPOSED INT. NO. 1415-A:** By Council Members Lander, Adams, Ayala, Cabrera, Brannan, Lancman, Eugene, Moya, Rosenthal, Menchaca, Kallos, Reynoso, Levine, Van Bramer, Salamanca, Chin, Rivera, Treyger, Levin, King, Cumbo, Torres, Rodriguez, Richards, Constantinides, Ampry-Samuel, Gibson, Powers, Rose, Louis, Koslowitz and Cornegy

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to wrongful discharge of fast food employees

**ADMINISTRATIVE CODE:** Amends Chapter 12 of title 20

**INTRODUCTION**

 On December 15, 2020, the Committee on Civil Service and Labor will hold a vote on two pieces of legislation related to fast food employees. Proposed Int. No. 1396-A, sponsored by Council Member Adrienne Adams, is a Local Law in relation to fast food employee layoffs, and Proposed Int. No. 1415-A, sponsored by Council Member Brad Lander, is a Local Law in relation to wrongful discharge of fast food employees. The Committee passed Proposed Int. No. 1396-A and Proposed Int. No. 1415-A by a vote of five in the affirmative, one in the negative, with zero abstentions.

 Previously, on February 13, 2020, the Committee on Civil Service and Labor held a hearing on Int. No. 1396 and Int. No. 1415. Witnesses who testified included representatives from the New York City (NYC) Department of Consumer Affairs (DCA), various labor unions, universities, chambers of commerce, fast food groups, and other interested parties.

**BACKGROUND**

 U.S. labor law traditionally allows for two categories of employment termination: termination with just cause (“Just Cause”) and termination without cause, also referred to as at-will employment.[[1]](#footnote-1) Just Cause termination requires an employer to provide some reason—some cause—for the dismissal of an employee.[[2]](#footnote-2) At-will employment, on the other hand, allows an employer to terminate an employee at any time, without notice and for any cause, or for no cause at all, so long as the basis for firing is not illegal.[[3]](#footnote-3) In an at-will employment jurisdiction, an employer could not fire an employee on the basis of protected categories and statuses, such as gender, race, religion, age, etc., but could fire based on any other, or no, reason at all.[[4]](#footnote-4) At-will employment recognizes that employees are allowed to resign from their places of employment at any time and without any reason and that employers should have the same right for termination.[[5]](#footnote-5) On the other hand, at-will employment can make it more difficult for workers to prove that they have been fired in an illegal way that violates the law, and doing so often requires more time and money for legal fees that many do not have.[[6]](#footnote-6)

In the U.S., all 50 states and Washington D.C. are at-will employment jurisdictions, although certain states have limited exceptions.[[7]](#footnote-7) One such exception to general at-will employment terminations is the public policy exception.[[8]](#footnote-8) In 42 states and Washington D.C., an employer cannot fire an employee if the firing would violate the public policy doctrine of the state or a state or federal statute.[[9]](#footnote-9) Firing an employee as a retaliatory act is one such example of the public policy exception.[[10]](#footnote-10) 36 states and Washington D.C. have an implied contract exception, which recognizes an implied contract between employer and employee as an exception to at-will employment, and 11 states have recognized that a breach of an implied covenant of good faith and fair dealing is also an exception to at-will employment.[[11]](#footnote-11)

New York State is an at-will employment state.[[12]](#footnote-12) Generally, employers have the right to discharge an employee at any time for any, or no, reasons, as long as if it is not an act of illegal retaliation or discrimination based on race, creed, national origin, disability, age, gender, sexual orientation or marital status.[[13]](#footnote-13) As part of an at-will economy, wrongful termination is a common complaint, particularly within the NYC fast-food industry.[[14]](#footnote-14) NYC has approximately 3,000 fast-food locations[[15]](#footnote-15) that employ more than 67,000 people,[[16]](#footnote-16) with about 2/3 of these fast food workers being women, 2/3 immigrants, and 88% people of color overall.[[17]](#footnote-17) Because the fast food industry in NYC is generally made up of women, immigrants, and people of color, advocates argue that the lack of legal protections against wrongful termination can exacerbate mistreatment in this industry and may result in workers, their families, and their communities struggling to maintain a financially stable life.[[18]](#footnote-18)

New findings from a report entitled “Fired on a Whim: The Precarious Existence of NYC Fast-food Workers” prepared by the Center for Popular Democracy, Fast Food Justice, the National Employment Law Project, and 32BJ SEIU suggest that job loss and reductions in hours are common within the industry and, further, a cause for significant financial hardship for its workers.[[19]](#footnote-19) As part of the report, a survey of 539 NYC fast-food workers was conducted, with survey responses indicating that:

* Fast food employers terminate workers with alarming frequency, with 50% of workers surveyed having been fired, laid off, or compelled to quit a fast food job due to intolerable working conditions, and 25% of those who reported job loss have experienced multiple job losses within the industry;[[20]](#footnote-20)
* Many workers are denied even a basic explanation when terminated, with 65% of workers reporting that in at least one instance they had not been given a reason for termination;[[21]](#footnote-21)
* Termination forces workers into poverty, with 62% of respondents who lost a fast food job or suffered a reduction in hours experiencing financial hardship as a result, including food insecurity, housing instability, loss of resources to pay for childcare, eviction, or being forced to drop out of school;[[22]](#footnote-22) and
* Drastic cuts in hours are common, with 58% of the 237 fast food worker sample reporting having experienced a significant and ongoing reduction in hours in one or more jobs, with workers losing an average of 14 hours per week.[[23]](#footnote-23)

Along with these findings, the report emphasizes the importance of passing “Just Cause” legislation that would protect the more than 67,000 fast-food workers in NYC from wrongful terminations and other biased, unfair firing practices.[[24]](#footnote-24) The report contains recommendations on what such legislation should include, including: requiring employers to demonstrate and provide a reason for termination; requiring employers to use warnings or suspensions for offenses so that workers can gauge where they stand in terms of being terminated; prohibiting termination if an employee is unaware of a rule or was not trained; providing cost-effective and voluntary arbitration to resolve disputed terminations; and considering fair reductions in hours, possibly of 15% or more, that would be equivalent to a termination to ensure that people are not forced to quit.[[25]](#footnote-25)

While these findings present significant concerns and ramifications for at-will employment economies, the practice does allow for certain flexibilities that more formal, contract and cause-based practices do not allow. The main draw to at-will employment is that it allows both employers and employees to work together more flexibly, without long-term contracts or promises from either party.[[26]](#footnote-26) While employers are able to let employees go without cause, reason, or notice, without long-term contractual obligations, employees are similarly free to leave their employment without cause, at any point.[[27]](#footnote-27) Since they are not contractually bound, at-will employees are also free from contractual obligations to pay any monetary penalty for leaving a job early, from giving substantial leave notice, and are not subject to non-compete agreements.[[28]](#footnote-28) At-will employment arrangements may also be particularly helpful for small-business owners who anticipate fluctuating staff needs and who would otherwise be bound, long-term, to an employee who might not be a good fit in their small businesses and spaces.[[29]](#footnote-29)

**ANALYSIS OF PROPOSED INT. NO. 1415-A**

Proposed Int. No. 1415-A would create a new subchapter in the Administrative Code which would prohibit the termination of a fast food employee or the substantial reduction of a fast food employee’s hours without just cause. The proposed legislation outlines factors which may constitute just cause for termination and requires employers to utilize progressive discipline before terminating a fast food employee and to provide discharged fast food employees with a written explanation for the reason of their termination.

This bill would also permit laid off fast food employees to schedule premium pays for missed shifts and provides for remedies for wrongful termination and wrongful reduction of hours, which include reinstation, back pay, and civil penalties.

This bill would take effect 180 days after it becomes law.

Since introduction, the language of Proposed Int. No. 1415-A was changed to amend the definitions of “probation period” and “progressive discipline,” eliminate a clause creating administrative enforcement, eliminate a clause creating a private right of action, and eliminate a clause exempting employees currently covered by a collective bargaining agreement. The language of the bill was further amended to list factors a fact-finder must consider in determining just cause, specify that an employer must provide written notice of the reasons for termination within 5 days of discharge, specify that discharged employees who miss a shift due to discharge are eligible for schedule change premiums, add additional language allowing for reinstatement and restoration of hours for wrongful termination, and add language requiring employers to have predictive, regular weekly scheduling practices for their fast food employees.

**ANALYSIS OF PROPOSED INT. NO. 1396-A**

 Proposed Int. No. 1396-A would amend section 20-1271 of the Administrative Code, as added by a local law of the city of New York for the year 2020, to prohibit employers from laying off employees or substantially reducing their hours for reasons other than bona fide economic reasons. The proposed legislation would also require fast food employers to dismiss employees by inverse seniority, as in, those hired last would be the first dismissed.

Proposed Int. No. 1396-A outlines what constitutes “bona fide economic reasons” and requires employers to support through business records that a dismissal was on the grounds of bona fide economic reasons. It also provides that employees discharged for bona fide economic reasons within the prior year must first be offered available shifts before they are distributed to other employees or new hires. Finally, the proposed bill would provide for arbitration of disagreements between fast food employers and fast food employees.

This bill would take effect at the same time and in the same manner that the local law for the year 2020 amending the administrative code of the city of New York in relation in relation to wrongful discharge of fast food employees, as proposed in introduction number 1415-A for the year 2019, takes effect, except that the commissioner of the department of consumer and worker protection may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such effective date.

Since introduction, Proposed Int. No. 1396-A was amended to add the bill’s requirements to the new subchapter created by Proposed Int. No. 1415-A, as opposed to creating a new subchapter of its own. Further, the language of Proposed Int. No. 1396-A was amended to change the definition of the term “seniority,” eliminate a clause that had created a private right of action for employees, eliminate a clause that had required a $500 civil penalty for each violation of the law, and eliminate a clause that held an exception to the law for those covered by valid collective bargaining agreements. The new language further added the requirement that employers offer available shifts to laid off employees before they are distributed to other employees or new hires.

**UPDATE**

On December 15, 2020, the Committee passed Proposed Int. No. 1396-A and Proposed Int. No. 1415-A by a vote of five in the affirmative, one in the negative, with zero abstentions.

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Proposed Int. No. 1415-A

By Council Members Lander, Adams, Ayala, Cabrera, Brannan, Eugene, Moya, Rosenthal, Menchaca, Kallos, Reynoso, Levine, Van Bramer, Salamanca, Chin, Rivera, Treyger, Levin, Cumbo, Torres, Rodriguez, Constantinides, Ampry-Samuel, Gibson, Powers, Rose, Louis, Koslowitz and Cornegy

..Title

A Local Law to amend the administrative code of the city of New York, in relation to wrongful discharge of fast food employees

..Body

Be it enacted by the Council as follows:

Section 1. Chapter 12 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 7 to read as follows:

SUBCHAPTER 7

WRONGFUL DISCHARGE OF FAST FOOD EMPLOYEES

§ 20-1271 Definitions. As used in this subchapter, the following terms have the following meanings:

Discharge. The term “discharge” means any cessation of employment, including termination, constructive discharge, reduction in hours and indefinite suspension.

Just cause. The term “just cause” means the fast food employee’s failure to satisfactorily perform job duties or misconduct that is demonstrably and materially harmful to the fast food employer’s legitimate business interests.

Probation period. The term “probation period” means a defined period of time, not to exceed 30 days from the first date of work of a fast food employee, within which fast food employers and fast food employees are not subject to the prohibition on wrongful discharge set forth in section 20-1272.

Progressive discipline. The term “progressive discipline” means a disciplinary system that provides for a graduated range of reasonable responses to a fast food employee’s failure to satisfactorily perform such fast food employee’s job duties, with the disciplinary measures ranging from mild to severe, depending on the frequency and degree of the failure.

Reduction in hours. The term “reduction in hours” means a reduction in a fast food employee’s hours of work totaling at least 15 percent of the employee’s regular schedule or 15 percent of any weekly work schedule.

§ 20-1272 Prohibition on wrongful discharge. a. A fast food employer shall not discharge a fast food employee who has completed such employer’s probation period except for just cause.

b. In determining whether a fast food employee has been discharged for just cause, the fact-finder shall consider, in addition to any other relevant factors, whether:

1. The fast food employee knew or should have known of the fast food employer’s policy, rule or practice that is the basis for progressive discipline or discharge;

2. The fast food employer provided relevant and adequate training to the fast food employee;

3. The fast food employer’s policy, rule or practice, including the utilization of progressive discipline, was reasonable and applied consistently;

4. The fast food employer undertook a fair and objective investigation into the job performance or misconduct; and

5. The fast food employee violated the policy, rule or practice or committed the misconduct that is the basis for progressive discipline or discharge.

c. Except where termination is for an egregious failure by the employee to perform their duties, or for egregious misconduct, a termination shall not be considered based on just cause unless (1) the fast food employer has utilized progressive discipline; provided, however, that the fast food employer may not rely on discipline issued more than one year before the purported just cause termination, and (2) the fast food employer had a written policy on progressive discipline in effect at the fast food establishment and that was provided to the fast food employee.

d. Within 5 days of discharging a fast food employee, the fast food employer shall provide a written explanation to the fast food employee of the precise reasons for their discharge. In determining whether a fast food employer had just cause for discharge, the fact-finder may not consider any reasons proffered by the fast food employer but not included in such written explanation provided to the fast food employee.

e. The fast food employer shall bear the burden of proving just cause by a preponderance of the evidence in any proceeding brought pursuant to this subchapter, subject to the rules of evidence as set forth in the civil practice law and rules or, where applicable, the common law.

f. In any action or proceeding brought pursuant to sections 20-1207, 20-1211, or 20-1273, if a fast food employer is found to have unlawfully discharged a fast food employee in violation of this subchapter the relief shall include an order to reinstate or restore the hours of the fast food employee, unless waived by the fast food employee, and, in any such proceeding brought pursuant to 20-1211 or 20-1273 where a fast food employer is found to have unlawfully discharged a fast food employee in violation of this subchapter, the fast food employer shall be ordered to pay the reasonable attorneys’ fees and costs of the fast food employee.

§ 20-1273 Applicability of schedule change premiums. A discharged fast food employee who loses a shift on a work schedule as a result of discharge, including employees whose employment is terminated for any reason, shall be entitled to schedule change premiums for each such lost shift pursuant to section 20-1222.

§ 20-1274 Exceptions. This subchapter shall not:

a. Apply to any fast food employee who is currently employed within a probation period;

b. Limit or otherwise affect the applicability of any right or benefit conferred upon or afforded to a fast food employee by the provisions of any other law, regulation, rule, requirement, policy or standard including but not limited to any federal, state or local law providing for protections against retaliation or discrimination.

§ 2. Subdivision b of section 20-1208 of the administrative code of the city of New York, as added by local law number 107 for the year 2017, is relettered as subdivision c and a new subdivision b is added to read as follows:

b. For each violation of section 20-1272, the department shall order reinstatement or restoration of hours of the fast food employee, unless waived by the fast food employee. The department may, in addition, grant the following relief: $500 for each violation, an order directing compliance with section 20-1272, rescission of any discipline issued, payment of back pay for any loss of pay or benefits resulting from the wrongful discharge, and any other equitable relief as may be appropriate.

§ 3. Subdivisions a of section 20-1211 of the administrative code of the city of New York, as added by local law number 107 for the year 2017, is amended to read as follows:

a. Claims. Any person, including any organization, alleging a violation of the following provisions of this chapter may bring a civil action, in accordance with applicable law, in any court of competent jurisdiction:

1. Section 20-1204;

2. Section 20-1221;

3. Subdivisions a and b of section 20-1222;

4. Section 20-1231;

5. Subdivisions a, b, d, f and g of section 20-1241;

6. Section 20-1251; [and]

7. Subdivisions a and b of section 20-1252; and

8. Section 20-1272.

§ 4. Subdivisions c of section 20-1211 of the administrative code of the city of New York as added by local law number 107 for the year 2017, and subdivision d of such section, as amended by local law number 80 for the year 2020, are relettered as subdivisions d and e, respectively, and a new subdivision c is added to read as follows:

c. For each violation of section 20-1272, the court shall order reinstatement or restoration of hours of the fast food employee, unless waived by the fast food employee, and shall order the fast food employer to pay the reasonable attorneys’ fees and costs of the fast food employee. The court may, in addition, grant the following relief: $500 for each violation, an order directing compliance with section 20-1272, rescission of any discipline issued, payment of back pay for any loss of pay or benefits resulting from the wrongful discharge, punitive damages, and any other equitable relief as may be appropriate.

§ 5. Subdivision a of section 20-1212 of the administrative code of the city of New York, as added by local law number 107 for the year 2017, and as amended by local law number 80 for the year 2020, is amended to read as follows:

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, relief for employees set forth in section 20-1208, civil penalties set forth in section 20-1209, 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 (i) the department from exercising its authority under section [20-1207](https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCadmin/0-0-0-128203#JD_20-1207) through [20-1209](https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCadmin/0-0-0-128205#JD_20-1209), or (ii) a person alleging a violation of this chapter from filing a complaint pursuant to section [20-1207](https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCadmin/0-0-0-128203#JD_20-1207) or a civil action pursuant to section [20-1211](https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCadmin/0-0-0-128206#JD_20-1211), or requesting an arbitration proceeding pursuant to section 20-1273 based on the same facts pertaining to such a pattern or practice, provided that a civil action pursuant to this section shall not have previously been commenced.

§ 6. Subdivisions a and b of section 20-1221 of the administrative code of the city of New York, as added by local law number 107 for the year 2017, are amended to read as follows:

a. A fast food employer shall have scheduling practices that provide each fast food employee with a regular schedule that is a predictable, regular set of recurring weekly shifts the employee will work each week. No later than when a new fast food employee receives such employee’s first work schedule, a fast food employer shall provide such employee with a [good faith estimate in writing setting forth] written copy of their regular schedule including the number of hours a fast food employee can expect to work per week for the duration of the employee’s employment and the expected [dates]days, times and locations of those hours. A fast food employer shall comply with sections 20-1241 and subdivision h of section 20-1272 before adding shifts to the regular schedule of a new or current fast food employee. If a long-term or indefinite change is made to the [good faith estimate] regular schedule, the fast food employer shall provide an updated [good faith estimate] copy of the regular schedule in writing to the affected employee as soon as possible and before such employee receives the first work schedule following the change. A fast food employer may not reduce the total hours in a fast food employee’s regular schedule by more than 15% from the highest total hours contained in such employee’s regular schedule at any time within the previous 12 months, unless the employee has previously consented to or requested such reduction in writing, or the reduction was consistent with the restrictions on discharges pursuant to subchapter 7 of this title.

b. A fast food employer shall provide a fast food employee with written notice of a work schedule containing regular shifts and on-call shifts on or before the employee’s first day of work. For all subsequent work schedules, the fast food employer shall provide such notice no later than 14 days before the first day of any new schedule. Such work schedule shall span a period of no less than seven days and contain all anticipated regular shifts and on-call shifts that the employee will work or will be required to be available to work during the work schedule. The regular shifts and on-call shifts in any work schedule shall not vary by more than 15% from the shifts on the employee’s regular schedule, unless the employee consented to or requested such changes in writing, or the change was consistent with the restrictions on discharges pursuant to subchapter 7 of this title.

§ 7. This local law takes effect 180 days after it becomes law, except that section two of this local law and the authority of the department of consumer and worker protection to enforce the provisions of this local law pursuant to section 20-1207 of the administrative code of the city of New York take effect 240 days after this local law becomes law, and provided that the commissioner of the department of consumer and worker protection may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such effective date.

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Proposed Int. No. 1396-A

By Council Members Adams, Lander, Moya, Ayala, Cabrera, Brannan, Eugene, Levine, Menchaca, Rosenthal, Kallos, Reynoso, Van Bramer, Salamanca, Chin, Cohen, Rivera, Treyger, Levin, Ampry-Samuel, Cumbo, Torres, Koslowitz, Rodriguez, Constantinides, Gibson, Powers, Vallone, Rose, Louis and Cornegy

A Local Law to amend the administrative code of the city of New York, in relation to fast food employee layoffs

Be it enacted by the Council as follows:

Section 1. Section 20-1271 of the administrative code of the city of New York, as added by a local law of the city of New York for the year 2020, relating to wrongful discharge of fast food employees, as proposed in introduction number 1415-A for the year 2019, is amended to add new definitions of "bona fide economic reason," and “seniority” in alphabetical order to read as follows:

 Bona fide economic reason. The term “bona fide economic reason” means the full or partial closing of operations or technological or organizational changes to the business in response to the reduction in volume of production, sales, or profit.

Seniority. The term “seniority” means a ranking of employees based on length of service, computed from the first date of work, including any probationary period, unless such service has been interrupted by more than six months, in which case length of service shall be computed from the date that service resumed. An absence shall not be deemed an interruption of service if such absence was the result of military service, illness, educational leave, leave protected or afforded by law, or any discharge based on a bona fide economic reason or that is in violation of any local, state or federal law, including this subchapter.

§ 2. The definition of "discharge" in section 20-1271 of the administrative code of the city of New York, as added by a local law of the city of New York for the year 2020, relating to wrongful discharge of fast food employees, as proposed in introduction number 1415-A for the year 2019, is amended to read as follows:

 Discharge. The term “discharge” means any cessation of employment, including layoff, termination, constructive discharge, reduction in hours and indefinite suspension.

§ 3. Subdivision a of section 20-1272 of the administrative code of the city of New York, as added by a local law of the city of New York for the year 2020, relating to wrongful discharge of fast food employees, as proposed in introduction number 1415-A for the year 2019, is amended to read as follows:

a. A fast food employer shall not discharge a fast food employee who has completed such employer’s probation period except for just cause or for a bona fide economic reason.

§ 4. Subdivision e of section 20-1272 of the administrative code of the city of New York, as added by a local law of the city of New York for the year 2020, relating to wrongful discharge of fast food employees, as proposed in introduction number 1415-A for the year 2019, is amended to read as follows:

e. The fast food employer shall bear the burden of proving just cause or a bona fide economic reason by a preponderance of the evidence in any proceeding brought pursuant to this subchapter, subject to the rules of evidence as set forth in the civil practice law and rules or, where applicable, the common law.

§ 5. Section 20-1272 of the administrative code of the city of New York, as added by a local law of the city of New York for the year 2020, relating to wrongful discharge of fast food employees, as proposed in introduction number 1415-A for the year 2019, is amended to add new subsections g and h:

g. A discharge shall not be considered based on a bona fide economic reason unless supported by a fast food employer’s business records showing that the closing, or technological or reorganizational changes are in response to a reduction in volume of production, sales, or profit.

h. Discharges of fast food employees based on bona fide economic reason shall be done in reverse order of seniority in the fast food establishment where the discharge is to occur, so that employees with the greatest seniority shall be retained the longest and reinstated or restored hours first. In accordance with section 20-1241, a fast food employer shall make reasonable efforts to offer reinstatement or restoration of hours, as applicable, to any fast food employee discharged based on a bona fide economic reason within the previous twelve months, if any, before the fast food employer may offer or distribute shifts to other employees or hire any new fast food employees.

§ 6. Sections 20-1273 and 20-1274 of the administrative code of the city of New York, as added by a local law of the city of New York for the year 2020, relating to wrongful discharge of fast food employees, as proposed in introduction number 1415-A for the year 2019, are renumbered 20-1274 and 20-1275 respectively and a new 20-1273 is added to read as follows:

§ 20-1273 Arbitration. a. On or after January 1, 2022, any person or organization representing persons alleging a violation of this subchapter by a fast food employer may bring an arbitration proceeding. In addition, the department may, to the extent permitted by any applicable law including the civil practice law and rules, provide by rule for persons bringing such a proceeding to serve as a representative party on behalf of all members of a class. Such a proceeding must be brought within 2 years of the date of the alleged violation. If the arbitrator finds that the fast food employer violated the provisions of this subchapter, it shall (i) require the fast food employer to pay the reasonable attorneys’ fees and costs of the fast food employee, (ii) require the fast food employer to reinstate or restore the hours of the fast food employee, unless the employee waives reinstatement, (iii) require the fast food employer to pay the city for the costs of the arbitration proceeding, and (iv) award all other appropriate equitable relief, which may include back pay, rescission of discipline, in addition to other relief, and such other compensatory damages or injunctive relief as may be appropriate.

b. A person or organization bringing an arbitration proceeding under subdivision a must serve the arbitration demand, and any amendments thereto, on the fast food employer either in person or via certified mail at the current or most recent fast food establishment where each fast food employee named in the arbitration demand is or was employed, or pursuant to the rules for service specified in article 3 of the civil practice law and rules. Such arbitration demand must include a general description of each alleged violation but need not reference the precise section alleged to have been violated.

c. The parties to an arbitration proceeding shall jointly select the arbitrator from a panel of arbitrators. The number of arbitrators on the panel shall be determined by the department. The arbitrators on the panel shall be chosen by a committee of eight participants established by the department and comprised of:

1. Four employee-side representatives, including fast food employees or advocates; and

2. Four employer-side representatives, including fast food employers or advocates.

d. If an insufficient number of employee-side and employer-side representatives agree to participate in the committee pursuant to subdivision c of this section, the department shall consult with those that have agreed to participate and select individuals to fill the requisite number of openings on the committee.

e. If the committee established pursuant to subdivision c of this section is unable to select a sufficient number of arbitrators for the panel as determined by the department, the department shall select the remaining arbitrators.

f. If the parties are unable to agree on an arbitrator, the department shall select an arbitrator from the panel.

g. The department shall provide interpretation services to any party requiring such services for the arbitration hearing.

h. The arbitration hearing shall be held at a location designated by the department or a location agreed to by the parties and the arbitrator. Except as otherwise provided in this chapter, such arbitration shall be subject to the labor arbitration rules established by the American arbitration association and the rules promulgated by the department to implement this subchapter. In case of a conflict between the rules of the American arbitration association and the rules of the department, the rules of the department shall govern. Any rules promulgated by the department implementing this section shall be consistent with the requirement that in any arbitration conducted pursuant to this section, the arbitrator shall have appropriate qualifications and maintain personal objectivity, and each party shall have the right to present its case, which shall include the right to be in attendance during any presentation made by the other party and the opportunity to rebut or refute such presentation.

i. If a fast food employee brings an arbitration proceeding, arbitration shall be the exclusive remedy for the wrongful discharge dispute and there shall be no right to bring or continue a private cause of action or administrative complaint under this subchapter, unless such arbitration proceeding has been withdrawn or dismissed without prejudice.

j. Each party shall have the right to apply to a court of competent jurisdiction for the confirmation, modification or vacatur of an award pursuant to article 75 of the civil practice law and rules, as such article applies, pursuant to applicable case law, to review of legally mandated arbitration proceedings in accordance with standards of due process.

§ 7. Subdivision a of section 20-1241 of the administrative code, as added by local law number 106 for the year 2017, is amended to read as follows:

a. 1. Before [hiring] a fast food employer may hire new fast food employees, including hiring through the use of subcontractors, and before a fast food employer may offer or distribute shifts pursuant to paragraph 2 of this subdivision, a fast food employer shall make reasonable efforts to offer reinstatement or restoration of hours, as applicable, to any fast food employee discharged based on a bona fide economic reason within the previous 12 months, provided that the department may define in rules what constitutes sufficient advance notice and a reasonable effort to offer reinstatement or restoration of hours, including with respect to discharged fast food employees who have declined prior offers of reinstatement or restoration of hours.

2. If the job opening or additional shift is not filled pursuant to paragraph 1 of this subdivision, before a fast food employer may hire new fast food employees, including hiring through the use of subcontractors, a fast food employer shall offer regular shifts or on call shifts that would otherwise be offered to a new fast food employee to the fast food employer's current fast food employees employed at all fast food establishments owned by the fast food employer, or at a subset of such fast food establishments as provided in rules promulgated pursuant to subdivision j of this section. A fast food employer may not transfer fast food employees from locations other than the location where such shifts will be worked or hire new fast food employees, including subcontractors, to perform the work of fast food employees for such shifts, except as provided for in subdivisions f, g and of this section.

§ 8. This local law takes effect at the same time and in the same manner that a local law for the year 2020 amending the administrative code of the city of New York in relation in relation to wrongful discharge of fast food employees, as proposed in introduction number 1415-A for the year 2019, takes effect, except that the commissioner of the department of consumer and worker protection may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such effective date.

MMB/LCB

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