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Title: A Local Law in relation to premiums for essential workers.

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Indexes:

Attachments: 1. Summary of Int. No. 1918, 2. Int. No. 1918, 3. April 22, 2020 - Stated Meeting Agenda with Links to Files, 4. Hearing Transcript - Stated Meeting 4-22-20, 5. Minutes of the Stated Meeting - April 22, 2020, 6. Committee Report 5/5/20, 7. Hearing Testimony 5/5/20, 8. Hearing Testimony 5/5/20 (Con't), 9. Hearing Transcript 5/5/20

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12/31/2021	*	City Council	Filed (End of Session)	

Int. No. 1918

By Council Members Cumbo, the Speaker (Council Member Johnson), Kallos, Van Bramer, Lander and Chin

A Local Law in relation to premiums for essential workers

Be it enacted by the Council as follows:

Section 1. Definitions. As used in this local law, the following terms have the following meanings:

Chain business. The term “chain business” shall mean any business that is part of a group of establishments that share a common owner or principal who owns at least 30 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 section 681 of the general business law.

Director. The term “director” means the director of the office of labor standards established pursuant to

section 20-a of the charter.

Essential business. The term “essential business” means any person or entity so defined by the New York state department of economic development in accordance with executive order 202.6 as issued by the governor on March 18, 2020 and extended thereafter.

Essential employee. The term “essential employee” means any person employed or permitted to work at or for an essential business. The term “essential employee” does not include any employee who is (i) salaried, (ii) covered by a collective bargaining agreement if such agreement expressly waives the provisions of this local law and provides comparable or superior benefits for essential employees, or (iii) covered by a program created pursuant to an emergency order issued by the governor that provides comparable or superior benefits for essential employees.

Essential employer. The term “essential employer” means any employer that employs a person or permits a person to work at or for an essential business.

Essential worker premium amount. The term “essential worker premium amount” shall mean \$30 for any shift of less than four hours, \$60 for any shift of between four and eight hours, inclusive, and \$75 for any shift of greater than eight hours.

Large essential employer. The term “large essential employer” means an essential employer that employs 100 or more persons or permits 100 or more persons to work at or for such employer’s essential business. In determining the number of persons performing work for an employer for compensation during a given week, all persons performing work for compensation on a full-time, part-time or temporary basis shall be counted, provided that where the number of persons 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 persons who worked for compensation per week during the preceding calendar year, and provided further that in determining the number of persons performing work for an employer that is a chain business, the total number of employees in that group of establishments shall be counted. The term “large essential employer”

does not include a business that is assigned a North American Industry Classification System code beginning with 531.

Office. The term “office” means the office of labor standards established pursuant to section 20-a of the charter.

§ 2. Premium amounts. a. A large essential employer shall provide an essential employee with the essential worker premium amount for each shift worked by the essential employee.

b. A large essential employer shall pay the essential worker premiums required under this section at such time as such employer pays an essential employee wages owed for work performed during that work week. Essential worker premium pay shall be separately noted on a wage stub or other form of written documentation and provided to the essential employee for that pay period.

§ 3. Retaliation. a. No person shall take any adverse action against an essential employee that penalizes such employee for, or is reasonably likely to deter such employee from, exercising or attempting to exercise any right protected under this local law. Taking an adverse action includes threatening, intimidating, disciplining, discharging, demoting, suspending, or harassing an essential employee, reducing the hours or pay of an essential employee, informing another essential employer, or any other person or entity that employs or permits individuals to work at or for such person or entity, that an essential employee has engaged in activities protected by this local law, and discriminating against the essential employee, including actions related to perceived immigration status or work authorization. An essential employee need not explicitly refer to this local law or the rights enumerated herein to be protected from retaliation.

§ 4. Notice and posting of rights. a. A large essential employer shall conspicuously post at any workplace or job site where any essential employee works notices informing employees of their rights protected under this local law within five days after its effective date. Such notices shall be in English and any language spoken as a primary language by at least five percent of employees at that location.

§ 5. Recordkeeping. a. A large essential employer shall retain records documenting their compliance

with the applicable requirements of this local law for a period of three years and shall allow the office to access such records and other information, in accordance with applicable law and with appropriate notice, in furtherance of an investigation conducted pursuant to this local law.

b. A large essential employer's failure to maintain, retain or produce a record or other information required to be maintained by this local law and requested by the office in furtherance of an investigation conducted pursuant to this local law that is relevant to a material fact alleged by the office in a notice of violation issued pursuant to this local law creates a rebuttable presumption that such fact is true.

§ 6. Administrative enforcement; jurisdiction and complaint procedures. a. The director shall enforce the provisions of this local law.

b. 1. Any person, including any organization, alleging a violation of this local law may file a complaint with the office within two years after the date the person knew or should have known of the alleged violation.

2. Upon receiving such a complaint, the office shall investigate it.

3. The office may open an investigation on its own initiative.

4. A person or entity under investigation shall, in accordance with applicable law, provide the office with information or evidence that the office requests pursuant to the investigation. If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the office believes that a violation of this local law has occurred, the office may attempt to resolve it through any action authorized by section 20-a of the charter. Adjudicatory powers pursuant to this local law may be exercised by the director or by the office of administrative trials and hearings pursuant to section 20-a of the charter.

5. The office shall keep the identity of any complainant confidential unless disclosure is necessary to resolve the investigation or is otherwise required by law. The office shall, to the extent practicable, notify such complainant that the office will be disclosing the complainant's identity before such disclosure.

§ 7. Specific administrative remedies for essential employees or former essential employees. a. For violations of this local law, the office may grant the following relief to essential employees or former essential

employees:

1. All compensatory damages and other relief required to make the essential employee or former essential employee whole;

2. An order directing compliance with the notice and posting of rights and recordkeeping requirements set forth in sections 4 and 5; and

3. For each violation of section 2 or section 3, payment as required under section 2, \$2,000 and an order directing compliance with such sections.

b. The relief authorized by this section shall be imposed on a per essential employee and per instance basis for each violation.

§ 8. Specific civil penalties payable to the city. a. For each violation of this local law, a large essential employer is liable for a penalty of \$1,000 for the first violation and, for subsequent violations, \$1,500 for the second violation and \$2,000 for each succeeding violation.

b. The penalties imposed pursuant to this section shall be imposed on a per essential employee and per instance basis for each violation.

§ 9. Enforcement by the corporation counsel. The corporation counsel or such other persons designated by the corporation counsel on behalf of the office may initiate in any court of competent jurisdiction any action or proceeding that may be appropriate or necessary for correction of any violation issued pursuant to this local law, including actions to secure permanent injunctions, enjoining any acts or practices that constitute such violation, mandating compliance with the provisions of this local law or such other relief as may be appropriate.

§ 10. Private cause of action. a. Any person, including any organization, alleging a violation of any provisions of this local law may bring a civil action, in accordance with applicable law, in any court of competent jurisdiction.

b. Remedies. Such court may order compensatory, injunctive and declaratory relief, including the

following remedies for violations of this local law:

1. An order directing compliance with the posting and recordkeeping requirements set forth in sections 4 and 5;
2. Rescission of any discipline issued in violation of section 3;
3. Reinstatement of any essential employee terminated in violation of section 3;
4. Payment of back pay for any loss of pay or benefits resulting from discipline or other action taken in violation of section 3;
5. Other compensatory damages and any other relief required to make the essential employee whole; and
6. Reasonable attorney's fees.

c. A civil action under this section shall be commenced within two years after the date the person knew or should have known of the alleged violation.

d. 1. Any person filing a civil action shall simultaneously serve notice of such action and a copy of the complaint upon the office. Failure to so serve a notice does not adversely affect any plaintiff's cause of action.

2. An essential employee need not file a complaint with the office pursuant to subdivision b of section 7 before bringing a civil action; however, no person shall file a civil action after filing a complaint with the office unless such complaint has been withdrawn or dismissed without prejudice to further action.

3. No person shall file a complaint with the office after filing a civil action unless such action has been withdrawn or dismissed without prejudice to further action.

4. The commencement or pendency of a civil action by an essential employee does not preclude the office from investigating the employer or commencing, prosecuting, or settling a case against the essential employer based on some or all of the same violations.

§ 11. Civil action by corporation counsel for pattern or practice of violations. a. 1. Where reasonable cause exists to believe that a large essential employer is engaged in a pattern or practice of violations of this

local law, 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 (i) the office from exercising its authority under sections 5 through 8, or (ii) a person alleging a violation of this local law from filing a complaint pursuant to section 6 or a civil action pursuant to section 10 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.

b. 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. 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 a large essential employer has engaged in a pattern or practice of violations of this local law. Any civil penalty so recovered shall be paid into the general fund of the city.

§ 12. This local law takes effect immediately.