



Legislation Text

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Int. No. 563-A

By Council Members Brewer, Hanif, Cabán, Joseph, Nurse, Gutiérrez, Sanchez, Louis, Richardson Jordan, Avilés, Schulman, Hudson, Rivera, Riley, Farías, Menin, Ayala, Krishnan, Won and Gennaro

A Local Law to amend the administrative code of the city of New York, in relation to creating a private right of action to enforce the provisions of the earned safe and sick time Act

Be it enacted by the Council as follows:

Section 1. Section 20-924 of the administrative code of the city of New York, as amended by local law number 97 for the year 2020, is amended to read as follows:

§ 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] 2 years of the date the person knew or should have known of the alleged violation. The department shall maintain confidential the identity of any natural person providing information relevant to enforcement of this chapter unless disclosure of such person's identity is necessary to the department for resolution of its investigation or otherwise required by federal or state law. The department shall, to the extent practicable, notify such person that the department will be disclosing [his or her] such person's identity prior to such disclosure.

c. 1. Upon receiving a complaint alleging a violation of this chapter, the department shall investigate

such complaint, provided that if the complainant commences a civil action pursuant to subdivision f of this section for the same alleged violation, the department shall stay such investigation until the department is notified such civil action is withdrawn or dismissed without prejudice. Upon notice of a final judgment or settlement in such a civil action, the department shall dismiss the complaint unless the department determines the complaint alleges a violation not resolved by such judgment or settlement. The complainant must notify the department, in a manner prescribed by the commissioner and described on the department's website, within 30 days of the date that the time for any appeal has lapsed that such complaint is withdrawn, dismissed without prejudice, or resolved by final judgment or settlement. Nothing in this paragraph shall affect the authority of the department to open an investigation on its own initiative pursuant to subdivision a of this section.

2. Within [fourteen] 14 days of written notification of an investigation by the department, the person or entity under investigation 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 each and every employee or former employee all appropriate relief. Such relief shall include: (i) for each instance of safe/sick time taken by an employee but unlawfully not compensated by the employer: [three] 3 times the wages that should have been paid under this chapter or [two hundred fifty dollars] \$250, whichever is greater; (ii) for each instance of 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] \$500; (iii) for each violation of section 20-918 not including discharge from employment: full compensation including wages and benefits lost, [five hundred dollars] \$500, and equitable relief as appropriate; (iv) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, [two thousand five hundred dollars] \$2,500, 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] \$500.

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] \$500 for the first violation and, for subsequent violations that occur within [two] 2 years of any previous violation, not to exceed [seven hundred and fifty dollars] \$750 for the second violation and not to exceed [one thousand dollars] \$1,000 for each succeeding violation. Penalties shall be imposed on a per employee and per instance basis.

f. Any person alleging a violation of this chapter may commence a civil action in any court of competent jurisdiction to seek compensatory damages, including, but not limited to, the relief set forth in subdivision d of this section, injunctive and declaratory relief, attorney's fees and costs, and such other relief as such court deems appropriate. Such civil action shall be commenced within 2 years of the date the person knew or should have known of the alleged violation.

g. Filing a complaint with the department in accordance with subdivision b of this section shall be neither a prerequisite nor a bar to bringing a civil action pursuant to subdivision f of this section.

h. The department shall annually report on its website; the number and nature of the complaints [received] filed pursuant to this chapter, [the results of investigations undertaken pursuant to this chapter,] including the number of such complaints not substantiated and the number of notices of violations issued[,]; the

number [and nature of adjudications] of civil actions, to the extent the department is notified of such civil actions pursuant to this chapter[,]; the number of investigations opened and closed pursuant to this chapter; and the average time for a complaint to be resolved pursuant to this chapter.

§ 2. This local law takes effect 60 days after it becomes law.

Session 12

IP/RO

LS #8401

12/12/23 9:08pm

Session 11

MWC

LS #347

Int. #127-2018