



Legislation Text

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Int. No. 1770-A

By Council Members Torres, the Public Advocate (Mr. Williams), Kallos, Rosenthal and Ayala

A Local Law to amend the administrative code of the city of New York, in relation to whistleblower protections for individuals subject to alleged adverse personnel actions

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 12-113 of the administrative code of the city of New York is amended by adding a new paragraph 11 to read as follows:

11. “Special commissioner of investigation” shall mean the position of deputy commissioner of investigation for the city school district of the city of New York, as established by mayoral executive order number 11 for the year 1990, as amended, or any successor to the duties of such officer.

§ 2. Subdivisions b through d of section 12-113 of the administrative code of the city of New York, as amended by local law number 33 for the year 2012, are amended to read as follows:

b. 1. No officer or employee of an agency of the city shall take an adverse personnel action with respect to another officer or employee in retaliation for his or her making a report of information concerning conduct which he or she knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by another city officer or employee, which concerns his or her office or employment, or by persons dealing with the city, which concerns their dealings with the city, [(i)] to the commissioner, [or (ii) to] a council member, the public advocate [or], the comptroller, [who shall refer such report to the commissioner] or the special commissioner of investigation. Such report shall be referred to the commissioner unless (i) such conduct is within the jurisdiction of the special commissioner of investigation, in which case such report shall be referred to such special commissioner, or (ii) such conduct is alleged to have

been committed by the commissioner, the special commissioner of investigation or a deputy commissioner of investigation, in which case such report shall be referred to the corporation counsel. For the purposes of this subdivision, an agency of the city shall be deemed to include, but not be limited to, an agency the head or members of which are appointed by one or more city officers, and the offices of elected city officers.

2. No officer or employee of a covered contractor or covered subcontractor shall take an adverse personnel action with respect to another officer or employee of such contractor or subcontractor in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee of such contractor or subcontractor, which concerns a contract with a contracting agency, [(i)] to the commissioner, [(ii) to] a council member, the public advocate [or], the comptroller, [who shall refer such report to the commissioner] the special commissioner of investigation, [or (iii) to] the chief procurement officer, the agency chief contracting officer, or the agency head or commissioner of the contracting agency[, who shall refer such report to the commissioner]. Such report shall be referred to the commissioner unless such conduct is within the jurisdiction of the special commissioner of investigation, in which case such report shall be referred to such special commissioner.

3. Every contract or subcontract in excess of one hundred thousand dollars shall contain a provision detailing the provisions of paragraph two of this subdivision and of paragraph two of subdivision e of this section.

4. Upon request, the commissioner, council member, public advocate [or], comptroller, special commissioner of investigation or corporation counsel receiving the report of alleged adverse personnel action shall make reasonable efforts to protect the anonymity and confidentiality of the officer or employee making such report.

5. No officer or employee of an agency of the city shall take an adverse personnel action with respect to another officer or employee in retaliation for his or her making a report of information concerning conduct

which he or she knows or reasonably believes to present a substantial and specific risk of harm to the health, safety or educational welfare of a child by another city officer or employee, which concerns his or her office or employment, or by persons dealing with the city, which concerns their dealings with the city, [(i) to the commissioner, [(ii) to] a council member, the public advocate, the comptroller [or], the mayor, the special commissioner of investigation or [(iii) to] any superior officer. Such report shall be referred to the commissioner unless (i) such conduct is within the jurisdiction of the special commissioner of investigation, in which case such report shall be referred to such special commissioner, or (ii) such conduct is alleged to have been committed by the commissioner, the special commissioner of investigation or a deputy commissioner of investigation, in which case such report shall be referred to the corporation counsel.

c. 1. An officer or employee [(i)] of an agency of the city, or [(ii)] of a public agency or public entity subject to the jurisdiction of the commissioner pursuant to chapter thirty-four of the charter, who believes that another officer or employee has taken an adverse personnel action in violation of subdivision b of this section may report such action (i) to the commissioner, or (ii) to the special commissioner of investigation, if such alleged adverse personnel action is within the jurisdiction of such special commissioner, or (iii) to the corporation counsel, if such alleged adverse personnel action is alleged to have been committed by the commissioner, the special commissioner of investigation or a deputy commissioner of investigation.

2. If such report concerns an alleged adverse personnel action that is within the jurisdiction of the special commissioner of investigation, such report shall be referred to such special commissioner, and if such report concerns an adverse personnel action that is alleged to have been committed by the commissioner, the special commissioner of investigation or a deputy commissioner of investigation, such report shall be referred to the corporation counsel.

d. 1. Upon receipt of a report made pursuant to subdivision c of this section, the commissioner, or the special commissioner of investigation or corporation counsel, as applicable, shall conduct an inquiry to determine whether retaliatory adverse personnel action has been taken.

2. Within fifteen days after receipt of an allegation pursuant to subdivision c of this section of a prohibited adverse personnel action, the commissioner, or the special commissioner of investigation or corporation counsel, as applicable, shall provide written notice to the officer or employee making the allegation that the allegation has been received by the commissioner, or the special commissioner of investigation or corporation counsel, as applicable. Such notice shall include the name of the person in the department of investigation, or in the offices of the special commissioner of investigation or the corporation counsel, as applicable, who shall serve as a contact with the officer or employee making the allegation. Thereafter, the commissioner, or the special commissioner of investigation or corporation counsel, as applicable, shall at least once in every 90-day period provide written notice of the status of such investigation to such officer or employee.

3. Upon the completion of an investigation initiated under this subdivision [c of this section], the commissioner, or the special commissioner of investigation or corporation counsel, as applicable, shall provide a written statement of the final determination to the officer or employee who complained of the retaliatory adverse personnel action. The statement shall include the [commissioner's] recommendations, if any, of the commissioner, or the special commissioner of investigation or corporation counsel, as applicable, for remedial action, or shall state that the commissioner, or the special commissioner of investigation or corporation counsel, as applicable, has determined to dismiss the complaint and terminate the investigation.

§ 3. Paragraph 1 of subdivision e of section 12-113 of the administrative code of the city of New York, as amended by local law number 33 for the year 2012, is amended to read as follows:

1. (i) Upon a determination that a retaliatory adverse personnel action has been taken with respect to an officer or employee of an agency of the city in violation of paragraph one or five of subdivision b of this section, the commissioner, or the special commissioner of investigation or corporation counsel, as applicable, shall without undue delay report his or her findings and, if appropriate, recommendations to the head of the appropriate agency or entity, who [(i)] shall determine whether to take remedial action and [(ii)] shall report

such determination to the commissioner, or the special commissioner of investigation or corporation counsel, as applicable, in writing.

(ii) Upon a determination that the agency or entity head has failed to take appropriate remedial action, the commissioner, or the special commissioner of investigation or corporation counsel, as applicable, shall consult with the agency or entity head and afford the agency or entity head reasonable opportunity to take such action.

(iii) If such action is not taken, the commissioner, or the special commissioner of investigation or corporation counsel, as applicable, shall report his or her findings and the response of the agency or entity head [(i)] to the complainant and if the complainant was employed by an agency the head or members of which are appointed by the mayor, to the mayor[, (ii)]; if the complainant was employed by a non-mayoral agency of the city, to the city officer or officers who appointed the agency head[,]; or [(iii)] if the complainant was employed by a public agency or other public entity not covered by the preceding categories but subject to the jurisdiction of the commissioner pursuant to chapter thirty-four of the charter, to the officer or officers who appointed the head of the public agency or public entity, who shall take such action as is deemed appropriate.

(iv) If, within 60 days from the date of such report to the mayor or to the officer or officers who appointed the head of the agency or entity, such agency or entity has not taken either the remedial action recommended by, or other remedial action acceptable to, the commissioner, the special commissioner of investigation or the corporation counsel, as applicable, such agency or entity head shall provide a written explanation to the complainant and to the commissioner, or the special commissioner of investigation or corporation counsel, as applicable, of the specific reasons why such agency or entity did not take such remedial action.

(v) Within one year after such written explanation is due to be provided to such complainant, the complainant may bring an action in any court of competent jurisdiction against the complainant's employer to recover relief necessary to make the complainant whole; provided that the monetary value of such relief shall

not exceed that of the remedial actions recommended by the commissioner, the special commissioner of investigation or the corporation counsel, as applicable, with respect to such complainant and that such relief shall otherwise be comparable to such recommended actions. If such complainant prevails in such action, such court shall award such complainant litigation costs and reasonable attorneys' fees. A complainant who brings an action pursuant to this subparagraph shall provide notice of such action to the commissioner, the special commissioner of investigation or the corporation counsel, as applicable; provided, however, that failure to provide such notice shall not be a jurisdictional defect and shall not be a defense to an action brought pursuant to this subparagraph.

§ 4. Subdivision i of section 12-113 of the administrative code of the city of New York, as amended by local law number 33 for the year 2012, is amended to read as follows:

i. Not later than October thirty-first of each year, the commissioner, in consultation with the special commissioner of investigation and the corporation counsel, shall prepare and forward to the mayor and the council a report [on the complaints governed by this section during] that shall include, but need not be limited to, the following information for the preceding fiscal year[. The report shall include, but not be limited to, the number of complaints received pursuant to this section, and the disposition of such complaints.];

1. The number of reports concerning conduct allegedly involving corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority, as described in paragraph 1 of subdivision b of this section, received by the commissioner, the special commissioner of investigation and the corporation counsel, whether directly or upon referral, in such fiscal year;

2. The number of reports concerning conduct allegedly involving corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority, as described in paragraph 2 of subdivision b of this section, received by the commissioner and the special commissioner of investigation, whether directly or upon referral, in such fiscal year;

3. The number of reports concerning conduct allegedly presenting a substantial and specific risk of harm

to the health, safety or educational welfare of a child by another city officer or employee, as described in paragraph 5 of subdivision b of this section, received by the commissioner, the special commissioner of investigation and the corporation counsel, whether directly or upon referral, in such fiscal year;

4. The number of complaints made under subdivision c of this section that were received by the commissioner, the special commissioner of investigation and the corporation counsel, in such fiscal year, and the disposition of such complaints; and

5. With respect to investigations conducted under subdivision d of this section:

(a) The number of investigations open at the end of such fiscal year and the median number of days that such investigations had been open at the end of such fiscal year;

(b) The number of investigations open for 90 or more days, but fewer than 180 days, at the end of such fiscal year;

(c) The number of investigations open for 180 or more days, but fewer than 365 days, at the end of such fiscal year;

(d) The number of investigations open for 365 or more days, but fewer than 730 days, at the end of such fiscal year;

(e) The number of investigations open for 730 or more days at the end of such fiscal year; and

(f) As of the end of such fiscal year, the number of full-time plus part-time personnel of the department of investigation, calculated based on full-time equivalency rates, whose duties include conducting investigations under subdivision d of this section.

§ 5. Section 12-113 of the administrative code of the city of New York is amended by adding a new subdivision j to read as follows:

j. Any referral to the special commissioner of investigation pursuant to subdivision b or c of this section shall not be construed to divest the commissioner of authority to investigate or participate in the investigation of the matter that has been referred.

§ 6. This local law takes effect 180 days after it becomes law.

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