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Title:	A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to private employees disconnecting from electronic communications during non-work hours		
Sponsors:	Alicka Ampry-Samuel, Diana I. Ayala, Alan N. Maisel, Helen K. Rosenthal, Stephen T. Levin		
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12/31/2021	*	City Council	Filed (End of Session)	

Int. No. 726

By Council Members Ampry-Samuel, Ayala, Maisel, Rosenthal and Levin

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to private employees disconnecting from electronic communications during non-work hours

Be it enacted by the Council as follows:

Section 1. Subdivision (e) of section 2203 of the New York city charter, as added by local law number 46 for the year 2013, is hereby amended to read as follows:

(e) The commissioner shall have all powers as set forth in:

(1) chapter 8 of title 20 of the administrative code relating to the receipt, investigation, and resolution of complaints thereunder regarding earned sick time, and the power to conduct investigations regarding violation

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of such chapter upon his or her own initiative; and

(2) chapter 14 of title 20 of the administrative code relating to the receipt, investigation, and resolution of complaints thereunder regarding the right to disconnect from email during non-work hours, and the power to conduct investigations regarding violation of such chapter upon his or her own initiative; and

[(2)](3) section 22-507 of the administrative code relating to the receipt, investigation, and resolution of complaints thereunder regarding the retention of grocery workers, and the power to conduct investigations regarding violations of such section upon his or her own initiative.

§ 2. Paragraph (1) of subdivision (h) of section 2203 of the New York city charter, as relettered by local law number 46 for the year 2013, is hereby amended to read as follows:

(h) (1) Notwithstanding any inconsistent provision of law, the department shall be authorized, upon due notice and hearing, to impose civil penalties for the violation of any laws or rules the enforcement of which is within the jurisdiction of the department pursuant to this charter, the administrative code or any other general, special or local law. The department shall have the power to render decisions and orders and to impose civil penalties for all such violations, and to order equitable relief for and payment of monetary damages in connection with enforcement of chapters 8 and 14 of title 20 of the administrative code. Except to the extent that dollar limits are otherwise specifically provided, such civil penalties shall not exceed five hundred dollars for each violation. All proceedings authorized pursuant to this subdivision shall be conducted in accordance with rules promulgated by the commissioner. The remedies and penalties provided for in this subdivision shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

§ 3. Title 20 of the administrative code of the city of New York is amended by adding a new chapter 11 to read as follows:

CHAPTER 14

DISCONNECTING FROM WORK

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§ 20-1401 **Definitions.** When used in this chapter, the following terms shall be defined as follows:

Chain business. The term "chain business" means 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 ten.

Electronic communications. The term "electronic communications" means electronic mail, text messages or other digital means of conveying data electronically.

Emergency. The term "emergency" means a sudden and serious event, or an unforeseen change in circumstances, that calls for immediate action to avert, control or remedy harm.

Employee. The term "employee" means any "employee" as defined in section 190(2) 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 general municipal law section 92 or county law section 207.

Employer. The term "employer" means any "employer" as defined in section 190(3) of the labor law with ten or more employees, but shall not include employees of (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.

Retaliation. The term "retaliation" means 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.

§ 20-1402 **Disconnecting from work.** a. 1. It shall be unlawful for any employer to require an employee to access work-related electronic communications outside of such employee's usual work hours, not including overtime, except in cases of emergency.

2. All employers shall be required to adopt a written policy regarding the use by employees of electronic devices to send or receive emails, text messages, or any other digital, work-related communication, during non-work hours. Such policy shall include:

(i) The usual work hours for each class of employees of the employer;

(ii) The categories of paid time off, including, but not limited to, vacation days, personal days and sick days to which employees are entitled. Use of such paid time off shall be considered non-work hours.

b. The provisions of this chapter do not apply to (i) any employees whose terms of employment require them to be on call twenty-four hours a day on days when they are working, in which case it shall only apply on such employee's days off, including paid time off, (ii) work study programs under 42 U.S.C. section 2753, (iii) employees for the hours worked and compensated by or through qualified scholarships as defined in 26 U.S.C. section 117 and (iv) independent contractors who do not meet the definition of employee under section 190(2)

of the labor law.

20-1403 **Retaliation and interference prohibited**. No employer 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: 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, and inform any person of his or her potential rights under this chapter.

§ 20-1404 **Notice of rights**. a. An employer shall provide any new employee at the commencement of employment or any existing employee within thirty days of the effective date of this local law, with written notice of such employee's right to disconnect pursuant to this chapter, including the right to be free from retaliation and to bring a complaint to 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. Instead of providing each employee with such notice, an employer may instead conspicuously post such notice at such employer's place of business in an area accessible to employees.

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

§ 20-1405 **Other legal requirements**. a. 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.

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§ 20-1406 **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.

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 unless disclosure of such complainant's identity is necessary for resolution of the investigation or otherwise required by law. The department shall, to the extent practicable, notify such complainant 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. The department shall keep complainants reasonably notified regarding the status of their complaint and any resultant investigation. If 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 employee or former employee all appropriate relief. Such relief shall include: (i) for each instance of an employee being required to access work-related electronic communications outside of the standard work hours: two hundred fifty dollars; (ii) for each instance of unlawful retaliation not including discharge from employment: full compensation including wages and benefits lost, five hundred dollars and equitable relief as appropriate; and (iii) 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.

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e. Any entity or person found to be in violation of the provisions of sections 20-1402 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.

f. The department shall report annually 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.

§ 4. This local law shall take effect 120 days after its enactment and the commissioner shall take such measures as are necessary for its implementation, including the promulgation of rules, prior to such effective date.

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