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Attachments:	1. Summary of Int. No. 2325, 2. Int. No. 2325, 3. May 27, 2021 - Stated Meeting Agenda with Links to Files, 4. Hearing Transcript - Stated Meeting 5-27-21, 5. Minutes of the Stated Meeting - May 27, 2021, 6. Committee Report 11/30/21, 7. Hearing Testimony 11/30/21, 8. Hearing Transcript 11/30/21				

Date	Ver.	Action By	Action	Result
5/27/2021	*	City Council	Introduced by Council	
5/27/2021	*	City Council	Referred to Comm by Council	
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Int. No. 2325

By Council Members Miller, Kallos, Ayala, Rodriguez, Levine, Rosenthal, Koslowitz and Cabrera (by request of the Mayor)

A Local Law to amend the administrative code of the city of New York, in relation to protections for restaurant, food service and airport workers displaced due to the COVID-19 disaster emergency

Be it enacted by the Council as follows:

Section 1. Title 20 of the administrative code of the city of New York is amended by adding a new chapter 14 to read as follows:

CHAPTER 14

DISPLACED RESTAURANT, FOOD SERVICE AND AIRPORT WORKERS

§ 20-1401 Short title. This chapter shall be known and may be cited as the “Displaced Food

Service and Airport Worker Right to Recall Law."

§ 20-1402 Definitions. As used in this chapter, the following terms have the following meanings:

Airport. The term "airport" means John F. Kennedy International Airport and LaGuardia Airport.

Airport hospitality operation. The term "airport hospitality operation" means a business that provides food or beverage service, passenger lounge service, retail or other consumer goods or services to members of the public at an airport.

Airport service provider. The term "airport service provider" means any person that performs, under contract with a certificated passenger air carrier: (i) food service, including for in-flight food or beverage service; or (ii) functions on the property of an airport that are directly related to the air transportation of persons, property or mail, including the loading or unloading of property on aircraft, assistance to passengers under part 382 of title 14 of the code of federal regulations, security, airport ticketing or check-in functions, ground-handling of aircraft or aircraft cleaning, sanitization functions or waste removal.

Covered employer. The term "covered employer" means an airport hospitality operation, airport service provider, food service contractor, or a private entity whose employees or contractors are regularly scheduled to work at an event center, that meets the definition of "employer" set forth in section 20-912. The term "covered employer" does not include the port authority of New York and New Jersey and air carriers certificated by the federal aviation administration.

Department. The term "department" means the department of consumer and worker protection.

Employee. The term "employee" means a person who meets or met the definition of "employee" set forth in section 20-912 and is or was employed by a covered employer.

Event center. The term "event center" means a publicly or privately owned structure with a seating capacity of 10,000 or more, or 50,000 or more square feet of meeting or exhibition space, that is used for public performances, sporting events, business meetings or similar events, including a concert hall, stadium, sports arena, racetrack, coliseum or convention center. The term "event center" includes any contracted, leased

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or sublet premises connected to or operated in conjunction with the purpose of such a structure, including food preparation facilities, concessions, retail stores, restaurants, bars and structured parking facilities.

Food service. The term "food service" means the on-site preparation, service or cleanup of food or beverages.

Food service contract. The term "food service contract" means a contract for the provision of food service, for a term of at least one year, that requires the food service contractor to provide all food service workers providing such food service.

Food service contractor. The term "food service contractor" means any person who, directly or through subcontracting, enters into a food service contract to provide food service to or on behalf of another person.

Laid-off employee. The term "laid-off employee" means any employee who was employed by a covered employer for six months or more between January 31, 2019 and January 31, 2020, and whose most recent separation from employment (i) was initiated by such covered employer, (ii) occurred after January 31, 2020 and before January 1, 2022 and (iii) was due to a government order, layoff, lack of business, reduction in force or other economic, non-disciplinary reason.

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 due to a government order, layoff, lack of business, reduction in force or other economic, non-disciplinary reason, or that is in violation of any local, state or federal law, including this chapter.

§ 20-1403 Right to recall. a. 1. Until and including December 31, 2024, before hiring a new employee, a covered employer shall, pursuant to this section, offer any positions that become available after the

effective date of the local law that added this chapter to its laid-off employees who are qualified for such position.

2. A covered employer's obligation to offer such positions to a laid-off employee shall be extinguished if (i) the covered employer has offered such a position to the laid-off employee pursuant to this section, and the laid-off employee has accepted such offer; (ii) the covered employer has made three or more comparable offers to the laid-off employee pursuant to this section; or (iii) the laid-off employee has informed the covered employer in writing that such employee does not intend to return to work for such covered employer. For purposes of this paragraph, a comparable offer means an offer of a position for which the laid-off employee is qualified pursuant to paragraph 4 of this subdivision, at a work schedule totaling at least 85 percent of the hours that the laid-off employee worked for the covered employer pursuant to the laid-off employee's regular work schedule or weekly work schedule when the laid-off employee was laid off.

3. Covered employers shall make such offers in writing by registered mail, by email or by text message to the laid-off employee's last known contact information, except that for any layoff occurring after the effective date of the local law that added this chapter, the covered employer shall use the method and contact information chosen and provided by the laid-off employee when such employee is laid off.

4. A laid-off employee is qualified for a position, without regard to title, if the laid-off employee (i) was employed in the same or a similar position by the covered employer when the laid-off employee was laid off or (ii) can perform the requirements of the position or would be able to perform the requirements of the position with the same training that would be provided to a new employee hired for the position.

5. A covered employer shall offer such positions to laid-off employees in the order of priority corresponding to items (i) and (ii) of paragraph 4 of this subdivision. If multiple laid-off employees in the same priority category are qualified for such a position, the covered employer shall offer the position to the laid-off employee with the greatest seniority for the covered employer.

b. A laid-off employee offered a position pursuant to this section shall be given no fewer than ten

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days from the date of receipt of the written offer to accept or decline the offer. A covered employer may make simultaneous conditional offers of employment to laid-off employees, with a final offer of employment conditioned on application of the priority system set forth in paragraph 5 of subdivision a of this section.

c. A covered employer that does not offer such a position to a laid-off employee on the grounds of lack of qualifications, and instead recalls another laid-off employee with less priority or hires someone other than a laid-off employee, shall provide the laid-off employee determined to be unqualified a written notice of non-qualification within thirty days identifying all reasons for such determination.

d. The requirements of this chapter also apply if:

1. The ownership of the covered employer changed after a laid-off employee's separation from employment, and the covered employer is conducting the same or similar operations as were conducted before January 31, 2020;

2. The form of organization of the covered employer changed after January 31, 2020, and the covered employer is conducting the same or similar operations as before such change;

3. Substantially all of the covered employer's assets were acquired by another person that conducts the same or similar operations using substantially the same assets; or

4. The covered employer relocated the operations at which a laid-off employee was employed before January 31, 2020 to a different location within the city.

§ 20-1404 Layoff procedures and requirements. a. Written notice of layoff. A covered employer shall provide a laid-off employee with written notice of the layoff, either in person or in writing to the employee's last-known address, or to the employee's phone number or email address if authorized by the employee. Such notice shall be provided at the time of layoff or within 60 days of the effective date of the local law that added this chapter if the layoff took place before such date. A covered employer shall provide notice to each laid-off employee in a language understood by such employee. The written notice shall include:

1. A notice of the layoff and the layoff's effective date;

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2. The laid off-employee's seniority at the time of layoff; and

3. A summary of the rights provided by this chapter, including the right to recall and to receive and accept job offers made based on seniority, the right to be free from retaliation and the right to enforce one's rights in court.

b. The department shall make publicly available on its website, in a downloadable format in each designated citywide language as defined in section 23-1101, a notice containing the information that a covered employer must provide to a laid-off employee pursuant to paragraph 3 of subdivision a of this section.

c. When laying off an employee, a covered employer shall request the employee's preferred mailing address, phone number or email address for purposes of receiving offers of open positions pursuant to section 20-1403.

d. Recordkeeping. Covered employers shall retain the following records for each laid-off employee, for at least two years from the date the written notice of layoff was required to be provided to such laid-off employee pursuant to subdivision a of this section: name; job classification at the time of separation from employment; date of hire; last known address; last known email address and phone number, if applicable; a copy of the written notice of layoff provided to the laid-off employee; proof of any offers of available positions to the laid-off employee; and proof of any notices of non-qualification provided to the laid-off employee.

§ 20-1405 Retaliatory action prohibited. No person shall refuse to employ, terminate, reduce in compensation or otherwise take any adverse action against any employee for seeking information or to enforce their rights under this chapter, for participating in any proceeding related to this chapter, for opposing or reporting any practice proscribed by this chapter or for otherwise asserting any right under this chapter. This section shall apply to any employee who mistakenly, but in good faith, alleges a violation of this chapter.

§ 20-1406 Enforcement. a. This chapter may be enforced in a civil action in any court of competent jurisdiction brought by one or more employees on their own behalf or on behalf of themselves and

other similarly situated employees. An employee may designate an agent or representative to maintain such an action.

b. If a court finds that a covered employer violated this chapter, it may enjoin the covered employer from engaging in such violation and may award any other appropriate affirmative relief, including compensatory damages, back pay and reinstatement or hiring of employees with or without back pay including fringe benefits. Interim earnings or amounts earnable with reasonable diligence by employees prevailing in such action shall operate to reduce any back pay otherwise allowable. Before such interim earnings are deducted from such back pay, the court shall deduct from such interim earnings any reasonable amounts expended by such employees in searching for, obtaining or relocating to new employment. A court may also order punitive damages if it finds that a covered employer violated this chapter with malice or with reckless indifference to the requirements of this chapter. If a court finds that a covered employer terminated an employee in violation of section 20-1405, the court may award, in addition to reinstatement, three times the amount of back pay and compensatory damages awarded.

c. If a covered employer takes an adverse action against an employee within 60 days of such employee's exercise of rights pursuant to, or any other activity protected by, this chapter, there shall be a rebuttable presumption that such adverse action was taken in violation of section 20-1405.

d. If an employee prevails in a civil action brought under this section, the court shall award reasonable attorney's fees and costs and expert witness fees incurred in bringing such action.

§ 20-1407 Expiration. This chapter expires on December 31, 2031.

§ 2. This local law takes effect immediately and remains in effect until December 31, 2031, when it is deemed repealed, provided that all actions and proceedings arising from events that occurred prior to such date may be prosecuted and defended to final effect in the same manner as they might if this local law were not so repealed.

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