



Legislation Text

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By Council Members Levine, Richards, Adams, Powers, Kallos, Salamanca, Reynoso, Ampy-Samuel, Lancman, Brannan, Rivera, Torres, Cabrera, Dromm, Grodenchik, Lander, Van Bramer, Cumbo, Moya, Louis, Ayala, Gibson, Cohen, Chin, Treyger, Rosenthal, Cornegy, Perkins, King and Rose

A Local Law to amend the administrative code of the city of New York, in relation to displaced hotel service workers and hotel service disruption notifications

Be it enacted by the Council as follows:

Section 1. Chapter 5 of title 22 of the administrative code of the city of New York is amended to add a new section 22-510 to read as follows:

§ 22-510 Displaced hotel service workers. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Affected hotel. The term “affected hotel” means a hotel or discrete portion of a hotel that has been the subject of a change in control or a change in controlling interest or identity.

Change in control. The term “change in control” means any sale, assignment, transfer, contribution or other disposition of all or substantially all of the assets used in the operation of a hotel or a discrete portion of a hotel. A change in control shall be defined to occur on the date of execution of the document effectuating such change.

Change in controlling interest or identity. The term “change in controlling interest or identity” means (i) any sale, assignment, transfer, contribution or other disposition of a controlling interest, including by consolidation, merger or reorganization, of a hotel employer or any person who controls a hotel employer; or (ii) any other event or sequence of events, including a purchase, sale or lease termination of a management contract or lease, that causes the identity of the hotel employer at a hotel to change. A change in controlling interest or identity shall be defined to occur on the date of execution of the document effectuating such change.

Eligible hotel service employee. The term “eligible hotel service employee” means a hotel service employee employed by a hotel employer at an affected hotel.

Former hotel employer. The term "former hotel employer" means any hotel employer who owns, controls or operates a hotel

prior to a change in control or change in controlling interest or identity of a hotel or of a discrete portion of a hotel that continues to operate as a hotel after such change.

Hotel. The term “hotel” means a transient hotel as defined in section 12-10 of the New York city zoning resolution or any successor provision of such resolution.

Hotel employer. The term “hotel employer” means any person who owns, controls or operates a hotel, and includes any person or contractor who, in a managerial, supervisory or confidential capacity, employs one or more hotel service employees.

Hotel service. The term “hotel service” means work performed in connection with the operation of a hotel.

Hotel service employee. The term "hotel service employee" means (i) any person employed to perform a hotel service at an affected hotel during the 365-day period immediately preceding the change in control or change in controlling interest or identity of such hotel, or (ii) any person formerly employed to perform a hotel service at an affected hotel who retains recall rights under the former hotel employer’s collective bargaining agreement, if any, or under any comparable arrangement established by the former hotel employer, on the date of the change in control or change in controlling interest or identity of such hotel. Notwithstanding the preceding sentence, the term “hotel service employee” shall not include persons who are managerial, supervisory or confidential employees or who otherwise exercise control over the management of the hotel.

Hotel service employee retention period. The term “hotel service employee retention period” means the 90-day period beginning on the date of a change in control or change in controlling interest or identity of the hotel or of a discrete portion of the hotel that continues to operate as a hotel after such change, provided that if such hotel is not open to the public on such date, such 90-day period shall begin on the first day that such hotel is open to the public after such change.

Person. The term "person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, trustee in bankruptcy, receiver or other entity that may employ persons or enter into service contracts, but does not include the city of New York, the state of New York, and the federal government or any other governmental entity, or any individual or entity managing real property for a governmental entity.

Successor hotel employer. The term "successor hotel employer" means a hotel employer who owns, controls or operates a hotel after a change in control or change in controlling interest or identity of the hotel or of a discrete portion of the hotel that continues to operate as a hotel after such change.

b. Hotel service employee retention. 1. No less than 15 days before a change in control or change in controlling interest or identity, a former hotel employer shall provide the successor hotel employer with a full and accurate list containing the name, address, date of hire and employment classification of each hotel service employee employed at an affected hotel. At the same time that the

former hotel employer provides such list, the former hotel employer shall post such list in a notice to the hotel service employees that also sets forth the rights provided by this section, in the same location and manner that other statutorily required notices to such employees are posted at the affected hotel; provided that if such hotel is not open to the public, such notice shall be transmitted in the same manner as any offer of employment made pursuant to paragraph 2 of this subdivision. Such notice shall also be provided to the employees' collective bargaining representative, if any.

2. A successor hotel employer shall, during the hotel service employee retention period, offer each eligible hotel service employee employment for no less than 90 days under the terms and conditions established by the successor hotel employer, or as required by law, except that the wage rate offered and paid for such period shall be the same as or higher than the wage rate last paid to such employee by the former hotel employer, or as required by law. Such offers shall be made in writing and shall remain open for at least 10 business days from the date of such offer.

3. Except as provided in paragraph 4 of this subdivision, during the hotel service employee retention period, an eligible hotel service employee retained pursuant to this section shall not be discharged without cause.

4. If at any time during the hotel service employee retention period the successor hotel employer determines that fewer hotel service employees are required than were employed by the former hotel employer, the successor hotel employer shall retain eligible hotel service employees by seniority and experience within each job classification, to the extent such classification exists.

5. A successor hotel employer shall retain written verification of each offer of employment made pursuant to paragraph 2 of this subdivision. Such verification shall include the name, address, date of hire and job classification of the eligible hotel service employee to whom the offer was made. A successor hotel employer shall retain such verification for no less than 3 years from the date the offer is made.

6. At the end of the hotel service employee retention period, the successor hotel employer shall perform a written performance evaluation for each hotel service employee retained pursuant to this section. If such employee's performance during such retention period is satisfactory, the successor hotel employer shall offer such employee continued employment under the terms and conditions established by the successor hotel employer. A successor hotel employer shall retain such written performance evaluation for no less than 3 years from the date it is issued.

c. Remedies. 1. A hotel service employee who has been discharged or not retained in violation of this section may bring an action in supreme court against a former hotel employer or successor hotel employer for violation of any obligation imposed pursuant to this section.

2. The court shall have authority to order preliminary and permanent equitable relief, including, but not limited to,

reinstatement of any employee who has been discharged or not retained in violation of this section. If the court finds that by reason of a violation of any obligation imposed pursuant to subdivision b of this section, a hotel service employee has been discharged or not retained in violation of this section, the court shall award:

(i) back pay, and an equal amount as liquidated damages, for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of (1) the average regular rate of pay received by the employee during the last 3 years of the employee's employment in the same occupation classification; or (2) the final regular rate of pay received by the employee. Back pay shall apply to the period commencing on the date of the discharge or refusal-to-retain by the successor hotel employer and ending on the effective date of any offer of reinstatement or reinstatement of the employee;

(ii) costs of benefits the successor hotel service employer would have incurred for the employee under such employee's benefit plan; and

(iii) the employee's reasonable attorney's fees and costs.

4. In any such action, the court shall have authority to order the former or successor hotel employer, as applicable, to provide any information required pursuant to subdivision b of this section.

d. Applicability. This section shall not apply to:

1. any successor hotel employer who, on or before the change of control or change in controlling interest or identity, agrees to assume, or to be bound by, the collective bargaining agreement of the former hotel employer, provided that such collective bargaining agreement provides terms and conditions for the discharge or laying off of employees;

2. if there was no existing collective bargaining agreement as described in paragraph 1 of this subdivision, any successor hotel employer who agrees, on or before the change of control or change in controlling interest or identity, to enter into a new collective bargaining agreement covering its hotel service employees, provided that such collective bargaining agreement provides terms and conditions for the discharge or laying off of employees; or

3. a former hotel employer who obtains a written commitment from a successor hotel employer that such successor hotel employer's hotel service employees will be covered by a collective bargaining agreement that provides terms and conditions for the discharge or laying off of employees.

e. Records 1. Each hotel employer shall maintain for three years, for each employee and former employee, by name, a record showing the employee's regular hourly rate of pay for each week of the employee's employment.

2. Each hotel employer shall make an employee's or former employee's records available in full to such employee or former employee upon request.

§ 2. Chapter 5 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 23 to read as follows:

### SUBCHAPTER 23

#### HOTEL SERVICE DISRUPTIONS

§ 20-850. Definitions. For the purposes of this subchapter, the following terms have the following meanings:

Hotel. The term “hotel” means a transient hotel as defined in section 12-10 of the New York city zoning resolution or any successor provision of such resolution.

Room. The term “room” means a room available or let out for use or occupancy in a hotel.

Service disruption. The term “service disruption” means any of the following conditions where such condition substantially affects or is likely to substantially affect any guest’s use of a room or utilization of a hotel service:

(i) construction work in or directly related to the hotel that creates excessive noise that is substantially likely to disturb a guest, other than construction that is intended to correct an emergency condition or other condition requiring immediate attention;

(ii) conditions of which the hotel is aware, indicating the presence in the hotel of any infestation by bed bugs, lice or other insects, rodents or other vermin capable of spreading disease or being carried, including on one’s person, if such infestation has not been fully treated within 24 hours of identifying it;

(iii) the unavailability, for a period of 48 hours or more, of any advertised hotel amenity, including, but not limited to, a pool, spa, shuttle service, internet access, or food and beverage service;

(iv) the unavailability, for a period of 48 hours or more, of any advertised room appliances or technology, including but not limited to, in-room refrigerators, or internet or Wi-Fi services;

(v) the unavailability of any advertised or legally required accessibility feature, including, but not limited to, an elevator, wheelchair lift, ramp, or accessible bathroom in such room or in any common area of the hotel;

(vi) the unavailability for a period of 24 hours or more, of any utility, including, but not limited to, gas, water or electricity when the unavailability affects only the location of the hotel; or

(vii) any strike, lockout or picketing activity, or other demonstration or event for a calendar day or more at or immediately adjacent to such hotel.

Third-party vendor. The term “third-party vendor” means a vendor with which a hotel has an arrangement for third-party room reservations, or any other entity that has reserved or entered into an agreement or booking for the use or occupancy of one or more rooms in a hotel in furtherance of the business of reselling such rooms to guests.

§ 20-851. Notification. a. Within 24 hours of becoming aware of a service disruption, a hotel shall provide notification of such service disruption to each third-party vendor and each guest who has entered into a reservation, booking, or agreement with the hotel or a third-party vendor for the use or occupancy of a room where such service disruption could reasonably affect such room or such guest’s stay or use of a hotel service. Such notification shall also be provided immediately before accepting or entering into any new reservation, booking, or agreement for the use or occupancy of a room or hotel service that could reasonably be affected by such service disruption. Such notification shall also be provided to any current guest who is substantially affected by such service disruption. Where the circumstances of such service disruption make timely notification impracticable, such notification shall be made as soon as practicable.

b. Such notification shall describe: (i) the nature of the service disruption; and (ii) the extent of the service disruption’s effect on reservations, bookings, or agreements to use or occupy such room or hotel services, including the right to cancel or terminate the reservation, booking, or agreement for the use or occupancy of such room or hotel services without the imposition of any fee, penalty or other charge, as provided in subdivisions c and d of this section. If such notification is included in a communication containing other information, the notification shall be in a significantly larger font and different color than the remainder of the communication.

c. A hotel shall not impose any fee, penalty or other charge, nor retain any deposit, in the event a guest, prior to checking in, cancels a reservation, booking, or agreement with such hotel for the use or occupancy of a room, where such guest’s stay or room could be substantially affected by a service disruption during such guest’s stay or use of a hotel service, unless the hotel provided prominent and clear notice of such service disruption, pursuant to subdivision b of this section, prior to accepting such reservation, booking, or agreement.

d. Where a service disruption arises only after any guest of such room has checked in, the hotel shall prominently and clearly notify such guest of such service disruption within 24 hours of becoming aware of such disruption, as provided in subdivision a of this section. Such notification shall specify the rights set forth in this subdivision, pursuant to subdivision b of this section. The guests of such room or hotel service may terminate any reservation, booking, or agreement for the rental of such room or use of a hotel service, and the hotel shall not impose any fee, penalty or other charge for such termination, nor retain any deposit related to any unused

portion of the period of the reservation, booking, or agreement following the onset of such service disruption.

§ 20-852. Penalties. a. Authorized agents and employees of the department of consumer and worker protection, and of any other agency designated by the mayor, shall have the authority to enforce the provisions of this subchapter.

b. A hotel that violates or causes another person to violate a provision of this subchapter or any rule promulgated pursuant to such subchapter, shall be subject to a civil penalty as follows:

1. for the first violation, a civil penalty of \$500;

2. for the second violation issued for the same offense within a period of two years of the date of the first violation, a civil penalty of \$1,000;

3. for the third violation issued for the same offense within a period of two years of the date of the first violation, a civil penalty of \$2,500; and

4. for the fourth and each subsequent violation issued for the same offense within a period of two years of the date of the first violation, a civil penalty of \$5,000.

c. A proceeding to recover any civil penalty pursuant to this section shall be commenced by the service of a summons or notice of violation returnable to the office of administrative trials and hearings.

§ 20-853. Rules. The department, or any other agency designated by the mayor pursuant to section 20-852, may promulgate rules in furtherance of the implementation and enforcement of this subchapter.

§ 3. This local law takes effect immediately, except that subchapter 23 of chapter 5 of title 20 of the administrative code of the city of New York, as added by section two of this local law, takes effect 120 days after it becomes law, and provided that section two of this local law shall not apply to any agreement executed or transaction initiated prior to such effective date, and further provided that prior to such date, the commissioner of consumer and worker protection, or of any other agency designated by the mayor, as applicable, may promulgate any rules necessary for implementation of this local law and may take any other measures necessary for its implementation.

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