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Sponsors:	Jumaane D. Williams, Corey D. Johnson, Ydanis A. Rodriguez				
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Int. No. 239

By Council Members Williams, Johnson and Rodriguez

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to the provision of vacation leave and employment.

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 [chapter] chapters 8 and 9 of title 20 of the administrative code relating to the receipt, investigation, and resolution of complaints thereunder regarding earned sick time and paid vacation leave, and the power to conduct investigations regarding violations of such chapter 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 [chapter] chapters 8 and 9 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 9 to read as follows:

CHAPTER 9

RIGHT OF EMPLOYEES TO VACATION LEAVE

§ 20-930 **Definitions.** When used in this chapter, the following terms shall be defined as follows:

a. “Calendar year” shall mean a regular and consecutive twelve month period, as determined by an employer.

b. “Chain business” shall mean 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.

c. “Employee” shall mean 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.

d. “Employer” shall mean any “employer” as defined in section 190(3) of the labor law, but not including (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.

e. “Paid vacation leave” shall mean paid leave from work for vacation, personal holiday, or paid leave for an absence from work approved by an employer.

f. “Retaliation” shall mean 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.

§ 20-931 Right to paid vacation leave; accrual. a. All employees of employers with ten or more employees who work at least an average of twenty hours per week have the right to paid vacation leave pursuant to this chapter. 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.

b. 1. An employee shall begin accruing paid vacation leave after working for the same employer for six months.

2. After the initial six-month period, employees are entitled to accrue leave in equal installments at every pay period while working for the employer, as follows:

i. Forty hours for the twelve-month period following the initial six-month period;

ii. Sixty hours for the twelve-month period beginning with the eighteenth month of employment;

iii. Eighty hours for each twelve-month period beginning after the thirtieth month of employment; and

iv. One hundred twenty hours for each twelve-month period beginning after the sixtieth month of employment.

3. For an employee who work more than twenty but less than forty hours per week, the number of vacation leave hours accrued shall be determined by taking the average number of hours per week such employee worked in the previous six months and reducing the accrual amounts in subparagraphs i.-iv. of paragraph 2 of subdivision b of this section by the same percentage that such employee worked less than forty hours per week.

c. Nothing in this chapter shall be construed to discourage or prohibit an employer from providing workers with a more generous vacation leave policy including, but not limited to, additional paid vacation leave.

d. An employer required to provide paid vacation leave pursuant to this chapter who provides an employee with an amount of paid leave, including, but not limited to, paid time off or paid personal days, sufficient to meet the requirements of subdivision b of this section and who allows such paid leave to be used for the same purposes and under the same conditions as paid vacation leave required pursuant to this chapter, is

not required to provide additional paid vacation leave for such employee.

e. Employees who are not covered by the overtime requirements of New York state law or regulations, including the wage orders promulgated by the New York commissioner of labor pursuant to article 19 or 19-A of the labor law, shall be assumed to work forty hours in each work week for purposes of vacation leave accrual unless their regular work week is less than forty hours, in which case vacation leave accrues based upon that regular work week.

f. The provisions of this chapter do not apply to (i) work study programs under 42 U.S.C. section 2753, (ii) employees for the hours worked and compensated by or through qualified scholarships as defined in 26 U.S.C. section 117 and (iii) independent contractors who do not meet the definition of employee under section 190(2) of the labor law.

g. Unused vacation leave as provided pursuant to this chapter shall be carried over to the following calendar year, unless the employee is paid for any unused paid vacation leave at the end of the calendar year in which such leave was not used.

h. Nothing in this chapter shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for paid vacation leave that has not been used.

i. If an employee is transferred to a separate division, entity or location in the city of New York, but remains employed by the same employer, such employee is entitled to all paid vacation leave accrued at the prior division, entity or location and is entitled to retain or use all vacation leave as provided pursuant to the provisions of this chapter.

j. When there is a separation from employment and the employee is rehired within six months of separation by the same employer, previously accrued vacation leave that was not used shall be reinstated and such employee shall be entitled to use such accrued vacation leave at any time after such employee is rehired, provided that no employer shall be required to reinstate vacation leave to the extent the employee was paid for

unused accrued vacation leave prior to separation and the employee agreed to accept such pay for such unused vacation leave.

§ 20-932 **Compensation for vacation leave; requests for leave.** a. An employer must compensate an employee who uses vacation leave at the same rate of pay and with the same benefits, including employer-provided healthcare benefits, as the employee would have earned during the time leave is taken, except that in no case shall the paid vacation leave hourly rates be less than the hourly rate provided in section 652(1) of the labor law.

b. An employer may require reasonable notice for the use of vacation leave.

c. An employer shall not require an employee, as a condition of taking vacation leave, to search for or find a replacement worker to cover the hours during which such employee is utilizing vacation leave.

§ 20-933 **Collective bargaining agreements.** The provisions of this chapter shall not apply to any employee covered by a valid collective bargaining agreement if (i) such provisions are expressly waived in such collective bargaining agreement and (ii) such agreement provides for a comparable benefit for the employees covered by such agreement in the form of paid days off; such paid days off shall be in the form of leave, compensation, other employee benefits, or some combination thereof. Comparable benefits shall include, but are not limited to, personal time, and holiday and Sunday time pay at premium rates.

§ 20-934 **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 request and use vacation leave, 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, or inform any person of his or her potential rights under this chapter.

§ 20-935 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 vacation leave pursuant to this chapter, including the accrual and use of vacation leave, the calendar year of the employer, and 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. The department shall create and make available notices that contain the information required pursuant to subdivision a of this section and such notices shall allow for the employer to fill in applicable dates for such employer's calendar year. Such notices shall be posted in a downloadable format on the department's website in Chinese, English, French-Creole, Italian, Korean, Russian, Spanish and any other language deemed appropriate by the department.

c. 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.

§ 20-936 Employer records. An employer shall retain records documenting such employer's compliance with the requirements of this chapter for a period of three years unless otherwise required pursuant to any other law, rule or regulation, and shall allow the department to access such records, with appropriate notice and at a mutually agreeable time of day, in furtherance of an investigation conducted pursuant to this chapter.

§ 20-937 Other legal requirements. a. This chapter provides minimum requirements pertaining to vacation leave and shall not be construed to preempt, limit or otherwise affect the applicability of any other law,

regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of paid vacation leave or otherwise extends protections to employees.

b. 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.

§ 20-938 **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 vacation leave taken by an employee but unlawfully not compensated by the employer: three times the wages that should

have been paid under this chapter or two hundred fifty dollars, whichever is greater; (ii) for each instance of vacation leave 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: five hundred dollars; (iii) 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 (iv) 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.

e. Any entity or person found to be in violation of the provisions of sections 20-931, 20-932 or 20-934 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 annually report 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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