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The Council of the City of New York

COMMITTEE REPORT OF THE HUMAN SERVICES DIVISION

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COMMITTEE ON CIVIL SERVICE AND LABOR

Hon. I. Daneek Miller, *Chair*

February 13, 2020

INT. NO. 1396:	By Council Members Adams, Lander, Moya, Ayala, Cabrera, Brannan, Lancman, Eugene, Levine, Menchaca, Rosenthal, Kallos, Reynoso, Van Bramer, Salamanca, Chin, Cohen, Rivera, Treyger, Levin, Ampry-Samuel, King, Cumbo, Torres, Koslowitz, Rodriguez, Richards, Constantinides, Gibson, Powers, Vallone, Rose, Louis and Cornegy
TITLE:	A Local Law to amend the administrative code of the city of New York, in relation to fast food employee layoffs
ADMINISTRATIVE CODE:	Amends Chapter 12 of title 20

INT. NO. 1415: By Council Members Lander, Adams, Ayala, Cabrera, Brannan, Lancman, Eugene, Moya, Rosenthal, Menchaca, Kallos, Reynoso, Levine, Van Bramer, Salamanca, Chin, Rivera, Treyger, Levin, King, Cumbo, Torres, Rodriguez, Richards, Constantinides, Ampry-Samuel, Gibson, Powers, Rose, Louis, Koslowitz and Cornegy

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to wrongful discharge from employment

ADMINISTRATIVE CODE: Amends Chapter 12 of title 20

INTRODUCTION

On February 13, 2020, the Committee on Civil Service and Labor will hold a hearing on two pieces of legislation related to fast food employees. Int. No. 1396, sponsored by Council Member Adrienne Adams, is a Local Law in relation to fast food employee layoffs, and Int. No. 1415, sponsored by Council Member Brad Lander, is a Local Law in relation to wrongful discharge from employment.

Witnesses invited to testify include representatives from the New York City (NYC) Department of Consumer Affairs (DCA), various labor unions, universities, chambers of commerce, fast food groups, and other interested parties.

BACKGROUND

U.S. labor law traditionally allows for two categories of employment termination: termination with just cause ("Just Cause") and termination without cause, also referred to as at-will employment.[1] Just Cause termination requires an employer to provide some reason—some cause—for the dismissal of an employee.[2] At-will employment, on the other hand, allows an employer to terminate an employee at any time, without notice and for any cause, or for no cause at all, so long as the basis for firing is not illegal.[3] In an at-will employment jurisdiction, an employer could not fire an employee on the basis of protected categories and statuses, such as gender, race, religion, age, etc., but could fire based on any other, or no, reason at all.[4] At-will employment recognizes that employees are allowed to resign from their places of employment at

[1] National Conference of State Legislatures. *At-Will Employment-Overview*. Available at: https://www.ncsl.org/research/labor-and-employment/at-will-employment-overview.aspx.
[2] Diana Wicks. Houston Chronicle. *What is the Difference Between Cause and Just Cause for Terminating Employment?* Available at: https://smallbusiness.chron.com/difference-between-cause-just-cause-terminating-employment-24361.html.
[3] *Id.*
[4] Law Office of Yuriy Moshes, P.C. Labor and Employment. *At-Will Employment in New York*. Available at: https://mosheslaw.com/at-will-employment-in-new-york/.

any time and without any reason and that employers should have the same right for termination.[5] On the other hand, at-will employment can make it more difficult for workers to prove that they have been fired in an illegal way that violates the law, and doing so often requires more time and money for legal fees that many do not have.[6]

In the U.S., all 50 states and Washington D.C. are at-will employment jurisdictions, although certain states have limited exceptions.[7] One such exception to general at-will employment terminations is the public policy exception.[8] In 42 states and Washington D.C., an employer cannot fire an employee if the firing would violate the public policy doctrine of the state or a state or federal statute.[9] Firing an employee as a retaliatory act is one such example of the public policy exception.[10] 36 states and Washington D.C. have an implied contract exception, which recognizes an implied contract between employer and employee as an exception to at-will employment, and 11 states have recognized that a breach of an implied covenant of good faith and fair dealing is also an exception to at-will employment.[11]

New York State is an at-will employment state.[12] Generally, employers have the right to discharge an employee at any time for any, or no, reasons, as long as if it is not an act of illegal retaliation or discrimination based on race, creed, national origin, disability, age, gender, sexual orientation or marital status.[13] As part of an at-will economy, wrongful termination is a common

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[5] *Id.*
[6] Sarah Jones. Vox Media Network. Intelligencer. Labor. *New York City Fast-Food Workers' Next Target: Unfair Firings*. Available at: https://nymag.com/intelligencer/2019/02/nyc-fast-food-workers-next-target-unfair-firings.html.
[7] World Population Review. *At Will Employment States 2020.* Available at: http://worldpopulationreview.com/states/at-will-employment-states/.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] New York State Department of Labor. Worker Protection. Wages and Hours: Frequently Asked Questions. Available at: https://www.labor.ny.gov/workerprotection/laborstandards/faq.shtm#13.
[13] *Id.*

complaint, particularly within the NYC fast-food industry.[14] NYC has approximately 3,000 fast-food locations[15] that employ more than 67,000 people,[16] with about 2/3 of these fast food workers being women, 2/3 immigrants, and 88% people of color overall.[17] Because the fast food industry in NYC is generally made up of women, immigrants, and people of color, advocates argue that the lack of legal protections against wrongful termination can exacerbate mistreatment in this industry and may result in workers, their families, and their communities struggling to maintain a financially stable life.[18]

New findings from a report entitled "Fired on a Whim: The Precarious Existence of NYC Fast-food Workers" prepared by the Center for Popular Democracy, Fast Food Justice, the National Employment Law Project, and 32BJ SEIU suggest that job loss and reductions in hours are common within the industry and, further, a cause for significant financial hardship for its workers.[19] As part of the report, a survey of 539 NYC fast-food workers was conducted, with survey responses indicating that:

- Fast food employers terminate workers with alarming frequency, with 50% of workers surveyed having been fired, laid off, or compelled to quit a fast food job due to intolerable working conditions, and 25% of those who reported job loss have experienced multiple job losses within the industry;[20]

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[14] Center for Popular Democracy, Fast Food Justice, the National Employment Law Project and 32BJ. *Fired on a Whim: The Precarious Existence of NYC Fast-food Workers*. Available at: https://populardemocracy.org/sites/default/files/Just%20Cause%20Complete%20Final%20-%20Web%20V2%20FINAL.pdf.

[15] New York City Department of Health and Mental Hygiene. *Restaurant Inspection Information*. Available at: http://a816-restaurantinspection.nyc.gov/RestaurantInspection/SearchBrowse.do.

[16] New York State Department of Labor. Labor Statistics. *Occupational Wages: New York City Region*. Available at: https://www.labor.ny.gov/stats/lswage2.asp.

[17] Center for Popular Democracy, Fast Food Justice, the National Employment Law Project and 32BJ. *Fired on a Whim: The Precarious Existence of NYC Fast-food Workers. Internal Analysis by James Parrott*. Available at: https://populardemocracy.org/sites/default/files/Just%20Cause%20Complete%20Final%20-%20Web%20V2%20FINAL.pdf.

[18] *Id.*

[19] *Id.*

[20] *Id.*

- Many workers are denied even a basic explanation when terminated, with 65% of workers reporting that in at least one instance they had not been given a reason for termination;[21]

- Termination forces workers into poverty, with 62% of respondents who lost a fast food job or suffered a reduction in hours experiencing financial hardship as a result, including food insecurity, housing instability, loss of resources to pay for childcare, eviction, or being forced to drop out of school;[22] and

- Drastic cuts in hours are common, with 58% of the 237 fast food worker sample reporting having experienced a significant and ongoing reduction in hours in one or more jobs, with workers losing an average of 14 hours per week.[23]

Along with these findings, the report emphasizes the importance of passing "Just Cause" legislation that would protect the more than 67,000 fast-food workers in NYC from wrongful terminations and other biased, unfair firing practices.[24] The report contains recommendations on what such legislation should include, including: requiring employers to demonstrate and provide a reason for termination; requiring employers to use warnings or suspensions for offenses so that workers can gauge where they stand in terms of being terminated; prohibiting termination if an employee is unaware of a rule or was not trained; providing cost-effective and voluntary arbitration to resolve disputed terminations; and considering fair reductions in hours, possibly of 15% or more, that would be equivalent to a termination to ensure that people are not forced to quit.[25]

While these findings present significant concerns and ramifications for at-will employment economies, the practice does allow for certain flexibilities that more formal, contract and cause-based practices do not allow. The main draw to at-will employment is that it allows both employers and employees to work together more flexibly, without long-term contracts or promises from either

[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*

party.[26] While employers are able to let employees go without cause, reason, or notice, without long-term contractual obligations, employees are similarly free to leave their employment without cause, at any point.[27] Since they are not contractually bound, at-will employees are also free from contractual obligations to pay any monetary penalty for leaving a job early, from giving substantial leave notice, and are not subject to non-compete agreements.[28] At-will employment arrangements may also be particularly helpful for small-business owners who anticipate fluctuating staff needs and who would otherwise be bound, long-term, to an employee who might not be a good fit in their small businesses and spaces.[29]

ANALYSIS OF INT. NO. 1396

Int. No. 1396 would create a new subchapter in the Administrative Code which would prohibit employers from laying off employees for reasons other than bona fide economic reasons and would also require fast food employers to only dismiss employees by inverse seniority. That is, the bill would require fast food employers to terminate first those employees who were hired last. The legislation also would provide for arbitration of disagreements between fast food employers and employees and would entitle laid off fast food employees to schedule pay premiums. Employers who are found in violation would be required to pay $500 for each violation and would be required to reinstate the dismissed employee with back pay. This legislation would not apply to fast food employees who are covered by a valid collective bargaining agreement.

This bill would take effect 180 days after it becomes law.

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[26] Laura Handrick. Fit Small Business. *At Will Employment Doctrine: How it Works & 4 Big Exceptions*. Available at: https://fitsmallbusiness.com/at-will-employment-doctrine/.
[27] *Id.*
[28] Catherine Lovering. Houston Chronicle. *Good things About At-Will Employment*. Available at: https://smallbusiness.chron.com/good-things-atwill-employment-34594.html.
[29] *Id.*

ANALYSIS OF INT. NO. 1415

Int. No. 1415 would create a new subchapter in the Administrative Code which would prohibit the termination of a fast food employee without just cause. This bill would also provide for a private cause of action, administrative enforcement, and arbitration guidelines to mediate disputes between fast food employers and employees and for specific remedies for those terminated for just cause. Employers who are found in violation would be required to pay $500 for each violation and would be required to reinstate the dismissed employee with back pay. This legislation would not apply to fast food employees who are covered by a valid collective bargaining agreement.

This bill would take effect 180 days after it becomes law.

Int. No. 1396

By Council Members Adams, Lander, Moya, Ayala, Cabrera, Brannan, Lancman, Eugene, Levine, Menchaca, Rosenthal, Kallos, Reynoso, Van Bramer, Salamanca, Chin, Cohen, Rivera, Treyger, Levin, Ampry-Samuel, King, Cumbo, Torres, Koslowitz, Rodriguez, Richards, Constantinides, Gibson, Powers, Vallone, Rose, Louis and Cornegy

A Local Law to amend the administrative code of the city of New York, in relation to fast food employee layoffs

Be it enacted by the Council as follows:

Section 1. Chapter 12 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 7 to read as follows:

SUBCHAPTER 7

FAST FOOD EMPLOYEE LAYOFFS

§ 20-1271 Definitions. As used in this subchapter, the following terms have the following meanings:

Bona fide economic reason. The term "bona fide economic reason" means the full or partial closing of operations or technological or organizational changes to the business, resulting in the reduction in volume of production, sales, or profit.

Reduction in hours. The term "reduction in hours" means a reduction in a fast food employee's hours of work totaling at least 15 percent of the employee's weekly work schedule.

Layoff. The term "layoff" means any cessation of employment, including discharge, termination, constructive discharge, indefinite suspension or reduction in hours.

§ 20-1272 Prohibition against layoffs not based on bona fide economic reasons. a. A fast food employer shall not layoff a fast food employee absent a bona fide economic reason.

b. A layoff shall not be considered based on bona fide economic reasons unless supported by a fast food employer's business records showing that the closing, technological or reorganizational changes results in a reduction in volume of production, sales, or profit.

c. Layoffs based on bona fide economic reasons shall be done in reverse order of seniority according to the length of service of fast food employees in the restaurant or store where the termination is to occur, computed in accordance with subdivision d of this section, so that employees senior in length of service shall be retained the longest and reinstated first.

d. For purposes of this subchapter, seniority of a fast food employee shall mean ranking based on length of service, computed as provided in this subdivision. Length of service shall be computed from the first date of employment, including any probationary period, unless such service has been interrupted by an absence from the payroll of more than six months, in which case length of service shall be computed from the date of restoration to the payroll. Length of service of a fast food employee shall be deemed not to have been interrupted if such absence was the result of military service, illness, educational leave, leave authorized by law, discharge without just cause or in violation of any local, state or federal law

§ 20-1273 Private cause of action. In addition to remedies that may be ordered pursuant to section 20-1211, a court of competent jurisdiction shall also order reasonable attorney's fees and costs for violations of this subchapter.

§ 20-1274 Arbitration. a. Except as otherwise provided by law, any person claiming to be aggrieved by a fast food employer's violation of this subchapter may bring an arbitration proceeding, including on a class or collective basis, for back pay and benefits and other damages, including punitive damages, for reinstatement, restoration of hours, and other injunctive relief, and for such other remedies as may be appropriate. In an arbitration proceeding brought pursuant to

this section, if the arbitrator finds in favor of the plaintiff, it shall award such person, in addition to other relief, reasonable attorney's fees and costs.

b. An arbitration demand, and any amendments thereto, must be served on the fast food employer at any of the employer's business addresses by regular mail, electronic mail, or private mail service, and must include a general description of the alleged violation(s) but need not reference the precise section(s) alleged to have been violated.

c. The parties to an arbitration proceeding shall jointly select the arbitrator from a panel of arbitrators, the number of which shall be determined by the office, chosen by a committee of eight participants established by the office comprised of:

1. Two fast food employees;

2. Two fast food employee advocates;

3. Two fast food employers; and

4. Two fast food employer advocates.

d. If an insufficient number of fast food employees, fast food employee advocates, fast food employers or fast food employer advocates agree to participate in the committee pursuant to subdivision c of this section, the office shall select individuals to fill the requisite number of openings on the committee.

e. If the committee pursuant to subdivision c of this section is unable to select a sufficient number of arbitrators for the panel as determined by the office, the office shall select the remaining arbitrators.

f. If the parties are unable to agree on an arbitrator, the office shall select an arbitrator from the panel.

g. The office shall provide translation services to any party requiring such services for the arbitration hearing.

h. The arbitration hearing shall be held at a location designated by the office. Such arbitration shall be subject to the labor arbitration rules established by the american arbitration association.

i. If a fast food employee brings an arbitration proceeding, arbitration shall be the exclusive remedy for the layoff not based on bona fide economic reasons dispute and there is no right to bring or continue a private cause of action or administrative complaint under this chapter, unless such arbitration proceeding has been withdrawn or dismissed without prejudice.

§ 20-1275 Applicability of Schedule Change Premiums. A fast food employee laid off not based on bona fide economic reasons shall be entitled to schedule pay premiums pursuant to section 20-1222, as applicable.

§ 20-1276 Exceptions. This subchapter does not:

1. Apply to any fast food employee who is covered by a valid collective bargaining agreement if such agreement expressly waives the provisions of this subchapter and provides comparable or superior benefits for fast food employees.

2. Preempt, limit or otherwise affect the applicability of any provisions of any other law, regulation, requirement, policy or standard.

§ 2. Subdivision a of section 20-1208 of the administrative code of the city of New York, as amended by local law number 69 for the year 2018, is amended to read as follows:

a. For violations of this chapter, the office may grant the following relief to employees or former employees;

1. All compensatory damages and other relief required to make the employee or former employee whole;

2. An order directing compliance with the notice and posting of rights and recordkeeping requirements set forth in sections 20-1205 and 20-1206; and

3. For each violation of:

(a) Section 20-1204,

(1) Rescission of any discipline issued, reinstatement of any employee terminated and payment of back pay for any loss of pay or benefits resulting from discipline or other action taken in violation of section 20-1204;

(2) $500 for each violation not involving termination; and

(3) $2,500 for each violation involving termination;

(b) Section 20-1221, $200 and an order directing compliance with section 20-1221;

(c) Section 20-1222, payment of schedule change premiums withheld in violation of section 20-1222 and $300;

(d) Section 20-1231, payment as required under section 20-1231, $500 and an order directing compliance with section 20-1231;

(e) Section 20-1241, $300 and an order directing compliance with section 20-1241;

(f) Subdivision a of section 20-1251, the greater of $500 or such employee's actual damages; [and]

(g) Subdivisions a and b of section 20-1252, $300; [and]

(h) Subdivision a or b of section 20-1262, $500 and an order directing compliance with such subdivision, provided, however, that an employer who fails to provide an employee with the written response required by subdivision a of section 20-1262 may cure the violation without a

penalty being imposed by presenting proof to the satisfaction of the office that it provided the employee with the required written response within seven days of the office notifying the employer of the opportunity to cure[.]; and

(i) Section 20-1272, $500 for each violation, an order directing compliance with section 20-1272 and reinstatement of any fast food employee terminated and payment of back pay for any loss of pay or benefits resulting from the wrongful layoff not based on bona fide economic reasons.

§ 3. Subdivisions a of section 20-1211 of the administrative code of the city of New York, as added by local law number 107 for the year 2017, is amended to read as follows:

§ 20-1211 Private cause of action a. Claims. Any person, including any organization, alleging a violation of the following provisions of this chapter may bring a civil action, in accordance with applicable law, in any court of competent jurisdiction:

1. Section 20-1204;

2. Section 20-1221;

3. Subdivisions a and b of section 20-1222;

4. Section 20-1231;

5. Subdivisions a, b, d, f and g of section 20-1241;

6. Section 20-1251; [and]

7. Subdivisions a and b of section 20-1252; and

8. Section 20-1272.

§ 4. This local law takes effect 180 days after it becomes law, provided further that the director of the office of labor standards may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such effective date.

Int. No. 1415

By Council Members Lander, Adams, Ayala, Cabrera, Brannan, Lancman, Eugene, Moya, Rosenthal, Menchaca, Kallos, Reynoso, Levine, Van Bramer, Salamanca, Chin, Rivera, Treyger, Levin, King, Cumbo, Torres, Rodriguez, Richards, Constantinides, Ampry-Samuel, Gibson, Powers, Rose, Louis, Koslowitz and Cornegy

A Local Law to amend the administrative code of the city of New York, in relation to wrongful discharge from employment

Be it enacted by the Council as follows:

Section 1. Chapter 12 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 7 to read as follows:

SUBCHAPTER 7

WRONGFUL DISCHARGE FROM EMPLOYMENT

§ 20-1271 Definitions. As used in this subchapter, the following terms have the following meanings:

Discharge. The term "discharge" means any cessation of employment, including termination, constructive discharge, reduction in hours and indefinite suspension.

Just cause. The term "just cause" means the fast food employee's failure to satisfactorily perform job duties or misconduct that is demonstrably and materially harmful to the fast food employer's legitimate business interests.

Probation period. The term "probation period" means a defined period of time, not to exceed 30 days from the time of hire, whereby fast food employers and fast food employees are free, at any time, with or without notice and with or without just cause, to end the employment relationship.

Progressive discipline. The term "progressive discipline" means a disciplinary system that provides a graduated range of reasonable responses to a fast food employee's failure to

satisfactorily perform such fast food employee's job duties, with the disciplinary measures ranging from mild to severe, depending on the frequency and degree of the failure. Nothing herein shall preclude a fast food employer from terminating a fast food employee immediately for a sufficiently egregious failure or misconduct constituting just cause.

Reduction in hours. The term "reduction in hours" means a reduction in a fast food employee's hours of work totaling at least 15 percent of the employee's weekly work schedule.

§ 20-1272 Prohibition of wrongful discharge. A fast food employer shall not discharge a fast food employee who has completed such employer's probation period except for just cause.

§ 20-1273 Administrative enforcement. a. In addition to section 20-1207, in determining whether a fast food employee has been terminated for just cause, the office shall consider, in addition to any other relevant factors, whether:

1. The fast food employee knew or should have known of the fast food employer's policy, rule or practice;

2. The fast food employer provided relevant and adequate training to the fast food employee;

3. The fast food employer's policy, rule or practice was reasonable and applied consistently; and

4. The fast food employer undertook a fair and objective investigation.

b. A termination shall not be considered based on just cause unless the fast food employer has utilized progressive discipline; provided, however, that the fast food employer may not rely on discipline issued more than one year before the purported just cause termination.

c. The fast food employer shall promptly provide a written explanation to any terminated fast food employee of the precise reasons for the just cause termination. In determining whether

a fast food employer had just cause for termination, the office may not consider any reasons not included in such written explanation.

d. The fast food employer shall bear the burden of proving just cause by a preponderance of non-hearsay evidence in any proceeding brought pursuant to this chapter.

§ 20-1274 Private cause of action. a. In addition to section 20-1211, in determining whether a fast food employee has been terminated for just cause, a court of competent jurisdiction shall consider, in addition to any other relevant factors, whether:

1. The fast food employee knew or should have known of the fast food employer's policy, rule or practice;

2. The fast food employer provided relevant and adequate training to the fast food employee;

3. The fast food employer's policy, rule or practice was reasonable and applied consistently; and

4. The fast food employer undertook a fair and objective investigation.

b. A termination shall not be considered based on just cause unless the fast food employer has utilized progressive discipline; provided, however, that the fast food employer may not rely on discipline issued more than one year before the purported just cause termination.

c. The fast food employer shall promptly provide a written explanation to any terminated fast food employee of the precise reasons for the just cause termination. In determining whether a fast food employer had just cause for termination, a fact finder may not consider any reasons not included in such written explanation.

d. The fast food employer shall bear the burden of proving just cause by a preponderance of non-hearsay evidence in any proceeding brought pursuant to this chapter.

e. In addition to remedies that may be ordered pursuant to section 20-1211, a court of competent jurisdiction shall also order reasonable attorney's fees and costs for violations of this subchapter.

§ 20-1275 Arbitration. a. Except as otherwise provided by law, any person claiming to be aggrieved by a fast food employer's violation of this chapter may bring an arbitration proceeding, including on a class or collective basis, for back pay and benefits and other damages, including punitive damages, for reinstatement, restoration of hours, and other injunctive relief, and for such other remedies as may be appropriate. In an arbitration proceeding brought pursuant to this section, if the arbitrator finds in favor of the plaintiff, it shall award such person, in addition to other relief, reasonable attorneys' fees and costs.

b. An arbitration demand, and any amendments thereto, must be served on the fast food employer at any of the employer's business addresses by regular mail, electronic mail, or private mail service, and must include a general description of the alleged violation(s) but need not reference the precise section(s) alleged to have been violated.

c. The parties to an arbitration proceeding shall jointly select the arbitrator from a panel of arbitrators, the number of which shall be determined by the office, chosen by a committee of eight participants established by the office comprised of:

1. Two fast food employees;

2. Two fast food employee advocates;

3. Two fast food employers; and

4. Two fast food employer advocates.

d. If an insufficient number of fast food employees, fast food employee advocates, fast food employers or fast food employer advocates agree to participate in the committee pursuant to

subdivision c of this section, the office shall consult with those that have agreed to participate and select individuals to fill the requisite number of openings on the committee.

e. If the committee pursuant to subdivision c of this section is unable to select a sufficient number of arbitrators for the panel as determined by the office, the office shall select the remaining arbitrators.

f. If the parties are unable to agree on an arbitrator, the office shall select an arbitrator from the panel.

g. The office shall provide translation services to any party requiring such services for the arbitration hearing.

h. The arbitration hearing shall be held at a location designated by the office. Such arbitration shall be subject to the labor arbitration rules established by the american arbitration association.

i. If a fast food employee brings an arbitration proceeding, arbitration shall be the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a private cause of action or administrative complaint under this chapter, unless such arbitration proceeding has been withdrawn or dismissed without prejudice.

j. In determining whether a fast food employee has been terminated for just cause, an arbitrator shall consider, in addition to any other relevant factors, whether:

1. The fast food employee knew or should have known of the fast food employer's policy, rule or practice;

2. The fast food employer provided relevant and adequate training to the fast food employee;

3. The fast food employer's policy, rule or practice was reasonable and applied consistently; and

4. The fast food employer undertook a fair and objective investigation.

k. A termination shall not be considered based on just cause unless the fast food employer has utilized progressive discipline; provided, however, that the fast food employer may not rely on discipline issued more than one year before the purported just cause termination.

l. The fast food employer shall promptly provide a written explanation to any terminated fast food employee of the precise reasons for the just cause termination. In determining whether a fast food employer had just cause for termination, an arbiter may not consider any reasons not included in such written explanation.

m. The fast food employer shall bear the burden of proving just cause by a preponderance of non-hearsay evidence in any arbitration proceeding brought pursuant to this chapter.

§ 20-1276 Applicability of Schedule Change Premiums. A fast food employee terminated for just cause shall be entitled to schedule pay premiums pursuant to section 20-1222, as applicable.

§ 20-1277 Exemptions. This subchapter does not:

a. Apply to any fast food employee who:

1. Is covered by a collective bargaining agreement if such agreement expressly waives the provisions of this subchapter and provides comparable or superior benefits for fast food employees; or

2. Is currently employed within a probationary period pursuant to section 20-1272;

b. Preempt, limit or otherwise affect the applicability of any provisions of any other law, regulation, requirement, policy or standard.

§ 2. Subdivision a of section 20-1208 of the administrative code of the city of New York, as amended by local law number 69 for the year 2018, is amended to read as follows:

a. For violations of this chapter, the office may grant the following relief to employees or former employees;

1. All compensatory damages and other relief required to make the employee or former employee whole;

2. An order directing compliance with the notice and posting of rights and recordkeeping requirements set forth in sections 20-1205 and 20-1206; and

3. For each violation of:

(a) Section 20-1204,

(1) Rescission of any discipline issued, reinstatement of any employee terminated and payment of back pay for any loss of pay or benefits resulting from discipline or other action taken in violation of section 20-1204;

(2) $500 for each violation not involving termination; and

(3) $2,500 for each violation involving termination;

(b) Section 20-1221, $200 and an order directing compliance with section 20-1221;

(c) Section 20-1222, payment of schedule change premiums withheld in violation of section 20-1222 and $300;

(d) Section 20-1231, payment as required under section 20-1231, $500 and an order directing compliance with section 20-1231;

(e) Section 20-1241, $300 and an order directing compliance with section 20-1241;

(f) Subdivision a of section 20-1251, the greater of $500 or such employee's actual damages; [and]

(g) Subdivisions a and b of section 20-1252, $300; [and]

(h) Subdivision a or b of section 20-1262, $500 and an order directing compliance with such subdivision, provided, however, that an employer who fails to provide an employee with the written response required by subdivision a of section 20-1262 may cure the violation without a penalty being imposed by presenting proof to the satisfaction of the office that it provided the employee with the required written response within seven days of the office notifying the employer of the opportunity to cure[.]; and

(i) Section 20-1272, $500 for each violation, an order directing compliance with section 20-1272 and reinstatement of any fast food employee terminated and payment of back pay for any loss of pay or benefits resulting from the wrongful discharge.

§ 3. Subdivisions a of section 20-1211 of the administrative code of the city of New York, as added by local law number 107 for the year 2017, is amended to read as follows:

§ 20-1211 Private cause of action a. Claims. Any person, including any organization, alleging a violation of the following provisions of this chapter may bring a civil action, in accordance with applicable law, in any court of competent jurisdiction:

1. Section 20-1204;

2. Section 20-1221;

3. Subdivisions a and b of section 20-1222;

4. Section 20-1231;

5. Subdivisions a, b, d, f and g of section 20-1241;

6. Section 20-1251; [and]

7. Subdivisions a and b of section 20-1252; and

8. Section 20-1272.

§ 4. This local law takes effect 180 days after it becomes law, provided that in the case of employees covered by a valid collective bargaining agreement in effect on such date, this local law takes effect on the date of the termination of such agreement, and provided further that the director of the office of labor standards may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such effective date.

MMB
LS # 5226
2/7/19; 10:47 a.m.