Committee on Civil Service and Labor

Malcom M. Butehorn, *Senior Legislative Counsel*

Kevin Kotowski, *Policy Analyst*

Kendall Stephenson, *Senior Economist*



The Council of the City of New York

COMMITTEE REPORT OF THE HUMAN SERVICES DIVISION

Jeffrey Baker, *Legislative Director*

Andrea Vazquez, *Deputy Director for Human Services*

COMMITTEE ON CIVIL SERVICE AND LABOR

Hon. I. Daneek Miller, *Chair*

June 20, 2019

**PROPOSED INT. NO. 1321-A:** By Council Members Espinal Jr., Cumbo, Salamanca, Brannan, Adams, Moya, Lancman, Kallos, Treyger, Rose, Menchaca, Ampry-Samuel, Levine, Ayala, Grodenchik, Rodriguez, Powers, Van Bramer, Lander, Levin, Eugene, Koslowitz, Miller, Chin, Cabrera, Cohen, Rosenthal, Reynoso, Holden, Gibson, King, Richards, Rivera, Vallone, Maisel and Torres

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to expanding the prevailing wage law for building service employees at city development projects.

**ADMINISTRATIVE CODE:** Amends Subdivisions a, b and c of Section 6-130.

**INT. NO. 1604:** By Council Members Miller and Brannan

**TITLE:**  A Local Law to amend the administrative code of the city of New York, in relation to reporting of workers’ compensation data.

**ADMINISTRATIVE CODE:**  Amends Subdivision c of Section 12-127.

**INT. NO. 108:** By Council Members Lander and Constantinides

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to regulating covenants not to compete for freelance workers.

**ADMINISTRATIVE CODE:** Amends Chapter 5 of title 22.

**RES. NO. 40:** By Council Members Cornegy Jr. and Koslowitz

**TITLE:**  Resolution calling upon the New York City Employee Retirement System to determine that members are disabled for purposes of accidental disability pensions, if both the New York State Workers’ Compensation Board and U.S. Social Security Administration determine that a member is disabled.

**RES. NO. 898**: By Council Members Miller, Menchaca and Kallos

**TITLE:** Resolution calling upon the New York State Legislature to pass, and the New York State Governor to sign, S.2837/A.2750, enacting The Farmworkers Fair Labor Practices Act.

**INTRODUCTION**

 On June 20, 2019, the Committee on Civil Service and Labor, chaired by Council Member I. Daneek Miller, will hold a hearing on Proposed Int. No. 1321-A, Int. No. 1604, Int. No. 108, Res. No. 40 and Res. No. 898. Proposed Int. No. 1321-A, sponsored by Council Member Rafael Espinal Jr., relates to expanding the prevailing wage law for building service employees at city development projects; Int. No. 1604, sponsored by Council Member I. Daneek Miller, relates to the reporting of workers’ compensation data; Int. No. 108, sponsored by Council Member Brad Lander, relates to regulating covenants not to compete for freelance workers; Res. No. 40, sponsored by Council Member Robert Cornegy Jr., relates to the New York City Employee Retirement System (NYCERS) and how members are determined disabled for purposes of accidental disability pensions; and Res. No. 898, sponsored by Council Member I. Daneek Miller, relates to supporting state legislation that would enact The Farmworkers Fair Labor Practices Act. Witnesses invited to testify today include the New York City Office of Labor Relations, New York City Department of Consumer and Worker Protection, the New York Employees Retirement System (NYCERS), the Independent Budget Office, labor advocates, labor unions, homeless providers, real estate groups, and others.

**BACKGROUND**

**Prevailing Wage**

 New York State’s prevailing wage law requires that contractors on state-funded construction projects pay their workers no less than the wage and benefit levels “prevailing” within the local construction market.[[1]](#footnote-1) It was enacted by statute in 1897 in New York State and then written into New York’s Constitution in 1938.[[2]](#footnote-2) The law exists in an effort to protect New York construction workers from being undercut by low-wage, often out-of-state contractors that may bid for a large government construction contract that would ultimately take away jobs and erode working conditions for local residents.[[3]](#footnote-3)

In New York City, prevailing wage is set annually by the New York City Comptroller for each trade or occupation for employers performing public works projects and building service work on New York City government-funded work sites.[[4]](#footnote-4) As required by New York State Labor Law Article Eight, prevailing wage rates for construction work on New York City public works projects are required, however New York City has additional prevailing wage requirements mandated by the New York City Administrative Code Section 6-130 for certain buildings receiving financial assistance from, or leasing space to, NYC government, and for food services or temporary office services workers that have contracts with NYC government agencies.[[5]](#footnote-5)

Although critics of the prevailing wage law rely on a singular argument of “higher wages means higher taxpayer costs,” this is largely not true.[[6]](#footnote-6) In fact, in multiple studies, economists have found no evidence that these laws have had any significant cost effects on the biggest drivers of New York State’s capital budget: highways and institutional buildings.[[7]](#footnote-7) Instead, according to an analysis done by the Economic Policy Institute, the prevailing wage law has: attracted and hired the industry’s most productive workers with the provision of the most advanced equipment and technology; strengthened and protected the state’s blue-collar middle class; increased skills to low-skilled workers through the promotion of on-the-job training and apprenticeships; and led to lower fatal and nonfatal injury rates in construction statewide.[[8]](#footnote-8)

**Workers’ Compensation**

 Workers’ compensation is insurance that provides cash benefits and/or medical care for workers who are injured or have become ill as a result of their job.[[9]](#footnote-9)Under New York State’s Worker Compensation Law, virtually all employers in New York State must provide workers’ compensation coverage for their employees.[[10]](#footnote-10) The New York State Workers’ Compensation Board processes and handles the claims of employees who have become injured or ill due to their job.[[11]](#footnote-11) As the workers’ compensation system is a form of no-fault insurance, employees have a right to receive workers’ compensation benefits, however an employee usually cannot sue an employer for an injury if such a policy is in place.[[12]](#footnote-12)

 New York City, as mandated by Local Law 41 of 2004, requires that a report concerning workers’ compensation claims by City employees be compiled annually and be transmitted to the Mayor, the Comptroller, the Public Advocate and the Speaker of the Council.[[13]](#footnote-13) The most recently received report for calendar year 2018, in accordance with Section 12-127 of the Administrative Code, includes a breakdown of the expenses paid, a list of specific claims for each agency, as well as specific types and locations of injuries, with year-to-year comparisons of the information from 2005 through 2018.[[14]](#footnote-14) For calendar year 2018:

* A total of 18,131 new claims were received, representing a decrease of 2.5% in claims when compared with 2017 for claims filed in that year;
* The total amount paid in 2018 with respect to these claims was $24.9 million, of which includes $15.9 million for wage replacement and $8.9 million for medical costs, totaling a decrease of 3% when compared with payments made in 2017;
* The largest numbers of claims came from the following five agencies: Department of Correction (5,350), Department of Education (3,150), Health + Hospitals Corporation (3,114), Fire Department (1,690) and Police Department (1,112); totaling approximately 80% of all claims made in 2018;
* The leading agencies in terms of cost were: Department of Transportation ($4.9 million), Department of Correction ($4.4 million), Health + Hospitals Corporation ($3.7 million), Department of Education ($2.4 million) and Police Department ($1.6 million); totaling approximately 68% of payments made on the cases reported.[[15]](#footnote-15)

**Non-Competition Agreements (Non-Compete)**

 A non-compete is an agreement that prohibits an employee from working for a competitor or opening a competing business, generally for a specific amount of time after an employee leaves a job.[[16]](#footnote-16) A non-compete can be within an employment contract or can be a standalone contract that an employee signs before or after their employment begins.[[17]](#footnote-17) Although no law requires an employee to sign a non-compete, employers are allowed to require someone to sign a non-compete before or after they have begun working for this employer, as a term of employment.[[18]](#footnote-18) However, non-competes are only allowed and enforceable to the extent it: is needed to protect the employers’ interests; does not impose an undue hardship on the employee; does not harm the public; and is reasonable in time and geographic scope.[[19]](#footnote-19) In its purest form, non-competes ensure employers’ trade secrets and confidential information are protected, however non-competes have become used in ways to stifle employees’ rights and protections.[[20]](#footnote-20) For example, depending upon its terms, a non-compete may limit an employee’s ability to accept a new job for a certain amount of time within a specific geographical area, which could ultimately make it difficult to find a job with higher wages or better job opportunities.[[21]](#footnote-21)

 In enforcing a non-compete agreement within New York, as they are considered to be “restraints of trade,”[[22]](#footnote-22) the court considers a number of factors, including what the employer’s legitimate interest protected is, the geographic and temporal scope of the restriction, type of work that employees can do, the benefits or compensation provided to the employee to sign the agreement, and how the employee ended employment.[[23]](#footnote-23) The enforceability of a non-compete is highly fact-specific, as analysis will change according to the particular agreement and the relationship surrounding the employee and employment in question.[[24]](#footnote-24) Thus, a court may require an employee to comply with some parts of a non-compete, however, if the court finds that portions of the agreement are unreasonable, they generally may invalidate the entire agreement or may enforce the agreement for a shorter amount of time and/or in a smaller geographic scope.[[25]](#footnote-25)

 Notably, non-competes have received scrutiny in recent years, as critics argue they can be extremely detrimental to employees; narrowing career paths, blocking opportunity, and forcing employees to stay in undesirable jobs.[[26]](#footnote-26) The New York State Attorney General (NYAG) has investigated a number of suspected misuses of non-competes and have ensured that those employees stop misusing non-competes.[[27]](#footnote-27) In settlements with companies such as Jimmy John’s, a sandwich chain, and WeWork, a co-working company, the NYAG found that non-competes were misused.[[28]](#footnote-28) In the Jimmy John’s settlement, the NYAG found that low-level/low-wage employees were forced into non-competes that limited career mobility and bullied them with the threat of them being sued.[[29]](#footnote-29) In addition, the NYAG found that in the WeWork settlement that low-level/low-wage employees were required to sign non-competes even when they had very little access to confidential or trade secret information, prohibiting all employees regardless of job duties and knowledge from working for competitors after leaving the company.[[30]](#footnote-30)

**ANALYSIS OF PROPOSED INT. NO. 1321-A**

A Local Law to amend the administrative code of the city of New York, in relation to expanding the prevailing wage law for building service employees at city development projects.

 Local Law 27 of 2012 (the “Prevailing Wage Law”) requires payment of prevailing wages to building service employees in buildings where a private developer receives at least $1,000,000 in discretionary financial assistance from the City or a City economic development entity for a City development project. The proposed legislation would expand the Prevailing Wage Law to cover additional developers and City development projects. Specifically, the proposed bill would amend the definition of “City development project” to remove the existing exemption for affordable housing projects and add an exemption for certain supportive housing projects. That exemption applies to a project that is financed in whole or in part through a New York City Housing Preservation & Development (HPD) loan for supportive housing that requires that: 1) 100 percent of units are rented to households earning up to 60 percent of the area median income; 2) at least 60 percent of units are reserved for homeless, disabled individuals or homeless families with a disabled head-of-household; 3) the covered developer presents a plan for providing on-site supportive services; and 4) the covered developer plans to secure or has secured a contract with a city, state or federal agency to provide on-site supportive services.

The bill would also amend the definition of “covered developer” to remove the exemption for not-for-profit developers of residential projects. The proposed legislation would take effect 120 days after it becomes law.

**ANALYSIS OF INT. NO. 1604**

A Local Law to amend the administrative code of the city of New York, in relation to reporting of workers’ compensation data.

 The proposed legislation would amend a requirement in the administrative code regarding reporting on data regarding workers’ compensation. Under the proposed legislation, the report would be issued by the City Law Department (instead of the Mayor) and include additional detailed information regarding workplace injuries and occupational diseases. The new reporting requirements will be more granular in detail and require the reporting of the type and cost of workers’ compensation claims; use of modified duty assignments; and use of disability transfers. The proposed legislation will also require every City agency to develop, implement and report an annual accident and illness prevention program designed to reduce injuries and illnesses identified in the report. Finally, the report, which is currently required to be sent to the Comptroller, Public Advocate and Speaker of the Council, would also be distributed to every Council Member. The legislation would take effect 120 days after it becomes law.

**ANALYSIS OF INT. NO. 108**

A Local Law to amend the administrative code of the city of New York, in relation to regulating covenants not to compete for freelance workers.

The proposed legislation would prohibit employers from requiring freelance workers to enter into non-compete agreements, unless the hiring party agrees to compensate the freelance worker during any period in which a non-compete agreement would restrict the freelancer from seeking other work. The proposed legislation would be enforced by the Office of Labor Standards within the Department of Consumer and Worker Protection and the Corporation Counsel would be empowered to investigate and sue hiring parties who exhibit a pattern or practice of violations. The proposed legislation also provides a private right of action for freelance workers.

Proposed Int. No. 1321-A

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

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to expanding the prevailing wage law for building service employees at city development projects

Be it enacted by the Council as follows:

 Section 1. Subdivision a of section 6-130 of the administrative code of the city of New York, as added by local law number 27 for the year 2012, is amended to read as follows:

a. Definitions. For purposes of this section, the following terms [shall] have the following meanings:

(1) [“Affordable housing project” means a project where not less than fifty percent of the residential units are affordable for households earning up to one hundred thirty percent of the area median income or in which all residential units are affordable to households earning up to one hundred sixty five percent of the area median income provided that at least twenty percent of units are affordable to households earning no more than fifty percent of area median income and at least one-third of residential units are occupied at the time of execution of the financial assistance, and where no more than thirty percent of the total square footage of the project area is used for commercial activities, defined as the buying, selling or otherwise providing of goods or services, or other lawful business or commercial activities otherwise permitted in mixed-use property.

(2)] “Building service work” means work performed in connection with the care or maintenance of a building or property, and includes but is not limited to work performed by a watchperson, guard, doorperson, building cleaner, porter, handyperson, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, or window cleaner.

[(3)] (2) “Building service employee” means any person, the majority of whose employment consists of performing building service work, including but not limited to a watchperson, guard, doorperson, building cleaner, porter, handyperson, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, or window cleaner.

[(4)] (3) “City development project” means a project undertaken by a city agency or a city economic development entity for the purpose of improvement or development of real property, economic development, job retention or growth, or other similar purposes where the project: (a) is expected to be larger than 100,000 square feet, or, in the case of a residential project, larger than 100 units; and (b) has received or is expected to receive financial assistance. [City development project shall not include an affordable housing project, nor shall it include] The term “city development project” does not include a project of the [Health and Hospitals Corporation] health and hospitals corporation. Such term also does not include a project that is financed in whole or in part through a loan for supportive housing that requires that (i) 100 percent of units are rented to households earning up to 60 percent of the area median income, (ii) at least 60 percent of units are reserved for homeless, disabled individuals or homeless families with a disabled head-of-household, (iii) the covered developer presents a plan for providing on-site supportive services, and (iv) the covered developer plans to secure or has secured a contract with a city, state or federal agency to provide on-site supportive services. A project will be considered a “city development project” for [ten] 10 years from the date the financially assisted project opens, or for the duration of any written agreement between a city agency or city economic development entity and a covered developer providing for financial assistance, whichever is longer.

[(5)] (4) “City economic development entity” means a not-for-profit organization, public benefit corporation, or other entity that provides or administers economic development benefits on behalf of the City pursuant to paragraph b of subdivision [one] 1 of section 1301 of the [New York city] charter.

[(6)] (5) “Comptroller” means the comptroller of the city [of New York].

[(7)] (6) “Contracting agency” means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution, or agency of government, the expenses of which are paid in whole or in part from the city treasury.

[(8)] (7) “Covered developer” means any person receiving financial assistance in relation to a city development project, or any assignee or successor in interest of real property that qualifies as a city development project. [“Covered developer” shall] The term “covered developer” does not include any not-for-profit organization, except where a not-for-profit organization receives financial assistance in relation to a residential city development project. Further, [a covered developer shall] such term does not include a business improvement district; a small business; nor [shall] does it include an otherwise covered developer whose industry conducted at the project location is manufacturing, as defined by the North American Industry Classification System.

[(9)] (8) “Covered lessor” means any person entering into a lease with a contracting agency.

[(10)] (9) “Financial assistance” means assistance that is provided to a covered developer for the improvement or development of real property, economic development, job retention and growth, or other similar purposes, and that is provided either (a) directly by the city, or (b) indirectly by a city economic development entity and that is paid in whole or in part by the city, and that at the time the covered developer enters into a written agreement with the city or city economic development entity is expected to have a total present financial value of [one million dollars] $1,000,000 or more. Financial assistance includes, but is not limited to, cash payments or grants, bond financing, tax abatements or exemptions (including, but not limited to, abatements or exemptions from real property, mortgage recording, sales and uses taxes, or the difference between any payments in lieu of taxes and the amount of real property or other taxes that would have been due if the property were not exempted from the payment of such taxes), tax increment financing, filing fee waivers, energy cost reductions, environmental remediation costs, write-downs in the market value of building, land, or leases, or the cost of capital improvements related to real property that, under ordinary circumstances, the city would not pay for; provided, however, that any tax abatement, credit, reduction or exemption that is given to all persons who meet criteria set forth in the state or local legislation authorizing such tax abatement, credit, reduction or exemption, [shall be] is deemed to be as of right (or non-discretionary); and provided further that the fact that any such tax abatement, credit, reduction or exemption is limited solely by the availability of funds to applicants on a first come, first serve or other non-discretionary basis set forth in such state or local law [shall] does not render such abatement, credit, reduction or exemption discretionary. Financial assistance [shall include] includes only discretionary assistance that is negotiated or awarded by the city or by a city economic development entity, and [shall] does not include as-of-right assistance, tax abatements or benefits. Where assistance takes the form of leasing city property at below-market lease rates, the value of the assistance [shall] will be determined based on the total difference between the lease rate and a fair market lease rate over the duration of the lease. Where assistance takes the form of loans or bond financing, the value of the assistance [shall] will be determined based on the difference between the financing cost to a borrower and the cost to a similar borrower that does not receive financial assistance from a city economic development entity.

[(11)] (10) “Lease” means any agreement whereby a contracting agency contracts for, or leases or rents, commercial office space or commercial office facilities of 10,000 square feet or more from a non-governmental entity provided the [City] city, whether through a single agreement or multiple agreements, leases or rents no less than [fifty-one] 51 percent of the total square footage of the building to which the lease applies, or if such space or such facility is entirely located within the geographic area in the borough of Staten Island, or in an area not defined as an exclusion area pursuant to section 421-a of the real property tax law on the date of enactment of the local law that added this section, then no less than [eighty] 80 percent of the total square footage of the building to which the lease applies. Such agreements [shall] do not include agreements between not-for-profit organizations and a contracting agency.

[(12)] (11) “Not-for-profit organization” means an entity that is either incorporated as a not-for-profit corporation under the laws of the state of its incorporation or exempt from federal income tax pursuant to subdivision c of section [five hundred one] 501 of the United States internal revenue code.

(13)] (12) “Prevailing wage” means the rate of wage and supplemental benefits paid in the locality to workers in the same trade or occupation and annually determined by the comptroller in accordance with the provisions of section 234 of the [New York state] labor law. As provided under section 231 of the [New York state] labor law, the obligation of an employer to pay prevailing supplements may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments under rules and regulations established by the comptroller.

[(14) Small business] (13) “Small business” means an entity that has annual reported gross revenues of less than [five million dollars] $5,000,000. For purposes of determining whether an employer qualifies as a small business, the revenues of any parent entity, of any subsidiary entities, and of any entities owned or controlled by a common parent entity shall be aggregated.

§ 2. Paragraph (2) of subdivision b of section 6-130 of the administrative code of the city of New York, as added by local law number 27 for the year 2012, is amended to read as follows:

(2) Prior to entering into a lease, or extension, renewal, amendment or modification thereof, and annually thereafter for the term of the lease, the contracting agency shall obtain from the prospective covered lessor, and provide to the comptroller, a certification, executed under penalty of perjury, that all building service employees employed in the building to which the lease pertains or under contract with the covered [developer] lessor to perform building service work in such building will be and/or have been paid the prevailing wage for the term of the lease. Such certification shall include a record of the days and hours worked and the wages and benefits paid to each building service employee employed at such building which shall be available for inspection by the city. Such certification shall be certified by the chief executive or chief financial officer of the covered lessor, or the designee of any such person. The certification shall be annexed to a part of any prospective lease. A violation of any provision of the certification or failure to provide such certification shall constitute a violation of this section by the party committing the violation of such provision.

§ 3. Paragraph (2) of subdivision c of section 6-130 of the administrative code of the city of New York, as added by local law number 27 for the year 2012, is amended to read as follows:

(2) Prior to commencing work at the city development project, and annually thereafter, every covered developer shall provide to the city economic development entity and the comptroller an annual certification executed under penalty of perjury that all building service employees employed at a city development project by the covered developer or under contract with the covered developer to perform building service work will be and/or have been paid the prevailing wage. Such certification shall include a record of the days and hours worked and the wages and benefits paid to each building service employee employed at the city development project or under contract with the covered developer. Such certification shall be certified by the chief executive or chief financial officer of the covered developer, or the designee of any such person. A violation of any provision of the certification, or failure to provide such certification, shall constitute a violation of this section by the party committing the violation of such provision.

§ 4. Paragraph (4) of subdivision c of section 6-130 of the administrative code of the city of New York, as added by local law number 27 for the year 2012, is amended to read as follows:

(4) No later than the day on which any work begins at any city economic development project subject to the requirements of this section, a covered developer shall post in a prominent and accessible place at every such city economic development project and provide each building service employee a copy of a written notice, prepared by the comptroller, detailing the wages, benefits, and other protections to which building service employees are entitled under this section. Such notice shall also provide the name, address and telephone number of the comptroller and a statement advising building service employees that if they have been paid less that the prevailing wage they may notify the comptroller and request an investigation. Such notice[s] shall be provided in English and Spanish. Such notice shall remain posted for the duration of the [lease] applicable period as set forth in paragraph 6 of this subdivision and shall be adjusted periodically to reflect the current prevailing wage for building service employees. The comptroller shall provide the city with sample written notices explaining the rights of building service employees and covered developers’ obligations under this section, and the city shall in turn provide those written notices to covered developers.

§ 5. This local law does not apply to any written agreement between a city agency or city economic development entity and a covered developer providing for financial assistance executed prior to the effective date of this local law, except that extension, renewal, amendment or modification of such written agreement, occurring on or after the effective date of this local law, that results in the grant of any additional financial assistance to a covered developer shall make such covered developer subject to the requirements of this local law.

§ 6. This local law takes effect 120 days after it becomes law.

MHL

LS #5520; 5670

06/05/19

Int. No. 1604

By Council Members Miller and Brannan

..Title

A Local Law to amend the administrative code of the city of New York, in relation to reporting of workers’ compensation data

..Body

Be it enacted by the Council as follows:

Section 1. Subdivision c of section 12-127 of chapter 1 of title 12 of the administrative code of the city of New York is hereby amended to read as follows:

c. 1. Definitions. For purposes of this subdivision, the term “occupational disease” has the same meaning as such term is defined in section 2 of the workers’ compensation law.

[(1)]2. Each agency shall keep a record of any workers’ compensation claim filed by an employee, the subject of which concerns an injury sustained in the course of duty while such employee was employed at such agency. Such record shall include, but not be limited to, the following data:

(i) the name of the agency where such employee worked;

(ii) such employee’s title;

(iii) the date such employee or the city filed such claim with the appropriate office of the state of New York, if any;

(iv) the date the city began to make payment for such claim, or the date such claim was established by the appropriate state office and the date the city began to make payment for such claim pursuant to such establishment, if any;

(v) the date such injury occurred or occupational disease was contracted;

(vi) the location at which such injury occurred or occupational disease was contracted;

(vii) the nature of such injury or occupational disease, including, but not limited to, the circumstances [of such injury], the type or diagnosis [of such injury] and a description of how such injury occurred or such occupational disease was contracted;

(viii) the length of time such employee is unable to work due to such injury or occupational disease, if any; [and]

(ix) whether the employee was given modified assignments or was transferred because of such injury or occupational disease and whether such employee suffered a loss of income or diminution of fringe benefits as a result; and

[(ix)](x) a list of any expenses paid as a result of such claim, including, but not limited to, expenses relating to wage replacement, medical costs, administrative costs and any penalties.

[(2)]3. Each agency shall transmit records gathered pursuant to paragraph [(1)]2 of subdivision c of this section, as soon as practicable, to the [mayor] law department of the city of New York.

4. Each agency shall collect and report to the law department, as soon as practicable, the following information:

(i) the number of persons employed;

(ii) the number of persons employed in each job title;

(iii) the total, average and median number of days of lost time due to workers’ compensation injuries within each job title;

(iv) the total amount of wages and workers’ compensation paid for disability to injured persons within each job title;

(v) the total amount of medical expenses paid for diagnosis and treatment of injuries and occupational diseases suffered by persons within each job title;

(vi) the number and nature of injuries and occupational diseases suffered by persons within each job title and the number of resulting workers’ compensation claims filed;

(vii) the causal factor of the injuries and occupational diseases suffered by persons within each job title as reported in subparagraph (vi) of this paragraph by category, including but not limited to, lifting, assault, trauma, repetitive stress, infectious pathogen and chemical exposure;

(viii) the average and median number of days between the onset of disability and the first payment of compensation made to injured persons within each job title; and

(ix) the total number of workers’ compensation claims.

[(3)]5. The [mayor of the city of New York] law department, in coordination with the office of management and budget, shall ensure that an annual report is prepared utilizing the [records] data received from each city agency pursuant to paragraphs [(2)]3 and 4 of subdivision c of this section. Such report shall be transmitted to the department of records and information services pursuant to section 1133 of the charter, the mayor, the comptroller, the public advocate, and the speaker and every member of the council [of the city of New York], by the first day of May, covering the previous calendar year. The report due in May shall include the data received from each city agency pursuant to paragraphs 3 and 4 of subdivision c of this section and analysis regarding the previous year. Such report shall include, but not be limited to:

(i) an analysis, with respect to each agency included in the report, of expenses paid as a result of workers’ compensation claims, including, but not limited to, expenses relating to wage replacement, medical costs, administrative costs and any penalties paid by an agency;

(ii) a listing by agency, job title and location of the number, type and cost of workers’ compensation claims;

(iii) a listing by agency, job title and location of the number, type and cost of work-related injuries and occupational diseases reported but not filed as a workers’ compensation claim;

 (iv) a report of each agency’s use of modified duty assignments and disability transfers, including an assessment of any disruption to the normal work hours, job duties, or job location of workers’ compensation claimants;

[(ii)](v) a list of the occurrence of specific claims for each agency and for the city as a whole;

[(iii)](vi) a list of the specific sites where injuries occurred or where occupational diseases were contracted for each agency and for the city as a whole; and

[(iv)](vii) a ten year year-to-year comparison[s] of [information] data compiled pursuant to this paragraph.

6. Each agency shall develop and implement an annual accident and illness prevention program designed to reduce injuries and illnesses identified in the report required pursuant to paragraph 5 of this subdivision.  A listing and description of these programs shall be included in the annual report required by this section and made available at each agency.

7. No later than 90 days after submission of the report required pursuant to paragraph 5 of this subdivision, the mayor shall submit to the comptroller, the public advocate, and the speaker and every member of the council a report on steps the city will take to develop programs to mitigate injury and illness based on the data gathered pursuant to paragraphs 2 and 4 of subdivision c of this section.

§ 2. This local law take effect 120 days after it becomes law.

MWC (2017)/MMB (2018)

LS # 9789/Int. 1622

NEW LS # 923

3/19/19; 11:08 a.m.

Int. No. 108

By Council Members Lander and Constantinides

..Title

A Local Law to amend the administrative code of the city of New York, in relation to regulating covenants not to compete for freelance workers

..Body

Be it enacted by the Council as follows:

Section 1. Declaration of legislative intent and findings. The council finds and declares that covenants not to compete are increasingly becoming common in contracts between hiring parties and freelance workers. Restrictive covenants not to compete are in some ways antithetical to the freelance work employment model. The practice of requiring freelance workers to enter into covenants not to compete in the fashion modelling industry is especially concerning to the council and often represents unequal bargaining power between freelance fashion models and hiring parties such as model management agencies. The council, therefore, finds it necessary and appropriate to create a requirement that hiring parties wishing to require freelance workers to agree to a covenant not to compete must guarantee a bi-weekly or monthly payment of a reasonable monetary sum that is mutually acceptable to both the hiring party and the freelance worker.

§2. Chapter 5 of title 22 of the administrative code of the city of New York is amended by adding a new section 22-510 to read as follows:

§ 22-510 Covenants not to compete. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Covenant not to compete. The term “covenant not to compete” means an agreement, or a clause contained in an agreement, which is entered into between a hiring party and a freelance worker after the effective date of the local law that added this section, and which restricts such freelance worker from performing work for another party not subject to such agreement for a specified period of time or in a specified geographical area, that is similar to such freelance worker’s work for the hiring party.

Freelance worker. The term “freelance worker” means any natural person or any organization composed of no more than one natural person, whether or not incorporated or employing a trade name, which is hired or retained as an independent contractor by a hiring party to provide services in exchange for compensation. This term does not include:

1. Any person who, pursuant to the contract at issue, is a sales representative as defined in section 191-a of the labor law;

2. Any person engaged in the practice of law pursuant to the contract at issue; who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth or the District of Columbia; and who is not under any order of any court suspending, enjoining, restraining, disbarring or otherwise restricting such person in the practice of law;

3. Any person who is a licensed medical professional; and

4. Any individual, partnership, corporation or other legal entity admitted to membership in the Financial Industry Regulatory Authority.

Hiring party. The term “hiring party” means any person who contracts with a freelance worker to provide any service, other than (i) the United States government, (ii) the state of New York, including any office, department, agency, authority or other body of the state including the legislature and the judiciary, (iii) the city, including any office, department, agency or other body of the city, (iv) any other local government, municipality or county or (v) any foreign government.

b. Prohibition; freelance workers. 1. No hiring party shall enter into a covenant not to compete with a freelance worker unless such covenant also contains a requirement for the hiring party to provide payment of a reasonable and mutually agreed upon sum to the freelance worker on either a bi-weekly or monthly basis for the duration of time during which the covenant not to compete is in effect.

2. A failure on the part of the hiring party to provide payment of the mutually agreed upon sum to the freelance worker in accordance with the terms of the covenant not to compete, will immediately render such covenant null and void.

c. Right of action. Except as otherwise provided by law, any freelance worker claiming to be aggrieved by a violation of this section may bring an action in any court of competent jurisdiction seeking a declaratory judgment that the covenant not to compete at issue is void. The court, in its discretion, may award the prevailing party reasonable attorney’s fees.

d. Damages. A plaintiff who prevails on a claim alleging a violation of paragraph 1 of subdivision b of this section shall be awarded statutory damages of $1,000.

e. Any person who violates paragraph 1 of subdivision b of this section is subject to a civil penalty of $500 per violation. The director of labor standards shall enforce the requirements of this section pursuant to rules promulgated by such director.

f. Civil action for pattern or practice of violations. Where reasonable cause exists to believe that a hiring party is engaged in a pattern or practice of violations of this section, the corporation counsel may commence a civil action on behalf of the city in a court of competent jurisdiction. The trier of fact may impose a civil penalty of not more than $25,000 for a finding that a hiring party has engaged in a pattern or practice of violations of this section. Any civil penalty so recovered shall be paid into the general fund of the city.

§ 2. This local law takes effect 120 days after it becomes law, except that the director of labor standards shall take any actions necessary for the implementation of this local law, including the promulgation of rules relating to procedures and penalties necessary to effectuate this section, before such date.

MN

LS #7998/Int. 1815-2017

LS 630

12/26/2017 11:20 AM

Res. No. 40

..Title

Resolution calling upon the New York City Employee Retirement System to determine that members are disabled for purposes of accidental disability pensions, if both the New York State Workers’ Compensation Board and U.S. Social Security Administration determine that a member is disabled

..Body

By Council Members Cornegy and Koslowitz

Whereas, When employees of the City of New York are injured on the job, they become eligible for various Federal, State and City benefits; and

Whereas, City employees who are injured in the course of their duties may be eligible for workers’ compensation benefits, Social Security benefits and accidental retirement disability benefits; and

Whereas, The New York State Workers’ Compensation System, the U.S. Social Security Administration, and the New York City Employee Retirement System (NYCERS) all have thorough processes for determining whether a City employee injured at work is eligible for benefits; and

Whereas, NYCERS has the sole discretion to determine whether an employee injured in the course of their job is eligible for an accidental retirement disability pension; and

Whereas, As confirmed by case law from 2008, NYCERS has the sole independent authority to determine eligibility for an accidental retirement disability pension based on the system’s 1-B Medical Board’s analysis and determination; and

Whereas, It is possible for an injured worker to be classified as disabled by, and receive benefits from, the New York State Workers’ Compensation Board and the U.S. Social Security Administration, but be simultaneously denied an accidental disability pension by NYCERS; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York City Employee Retirement System to determine that members are disabled for purposes of disability pensions, if both the New York State Workers Compensation Board and U.S. Social Security Administration determine that a member is disabled.

MWC

LS 9924/Res. 1458

LS 945

1/4/18

Res. No. 898

..Title

Resolution calling upon the New York State Legislature to pass, and the New York State Governor to sign, S.2837/A.2750, enacting The Farmworkers Fair Labor Practices Act.

..Body

By Council Members Miller, Menchaca and Kallos

 Whereas, There are an estimated 2.5 to 3 million farmworkers throughout the United States, with approximately 80,000 working within New York State; and

 Whereas, A New York State Comptroller report indicates that New York State’s more than 35,000 farms generated $4.8 billion in revenue in 2017, producing a wide variety of agricultural commodities, such as sour cream, grapes, yogurt, and apples; and

 Whereas, Although New York State has a large number of farms, there is a very small number within New York City due to geographic and logistical limitations, however, the recent increased utilization of urban agriculture throughout the city has created more community gardens, small commercial farms, farms at New York City Housing Authority developments and school gardens; and

 Whereas, According to the most recently available United States Department of Agriculture’s Census of Agriculture, as of 2012, there were approximately 31 farms throughout New York City, with a majority of these farms being less than 10 acres in size; and

 Whereas, In addition to these 31 farms, the New York City Food Policy Food Metrics Report of 2018 reported that there were 530 GreenThumb registered community gardens and 735 registered public school garden projects throughout New York City; and

 Whereas, These farms and spaces throughout the city may require farmworkers, however, there is a lack of data regarding just how many of these workers exist within New York City; and

 Whereas, Despite a lack of data specific to farmworkers in New York City, it is evident that farmworkers provide essential economic and cultural contributions to many of the nation’s communities, including New York City, while continually being a group of workers that are undervalued, overworked and poorly compensated; and

 Whereas, Examples of this mistreatment can be seen in the results of the most recently available national survey of farmworkers, the National Agricultural Workers Survey for Fiscal Years 2015 to 2016, in which farmworkers reported that: mean and median personal incomes for the previous calendar year were in the range of $17,500 to $19,999, only 43% of farmworkers were covered by Unemployment Insurance (UI), only 57% of farmworkers received training or instruction in the safe use of pesticides, only 47% of farmworkers had health insurance, and the average number of work hours for farmworkers paid by the hour was 45 work hours per week; and

 Whereas, In addition, according to the United States Department of Labor, farm work is one of the most dangerous-and most often fatal-occupations, with the New York Civil Liberties Union stating that farmworkers routinely risk their health and safety due to physically exhaustive work, long hours driven by seasonal harvesting cycles, exposure to pesticides and lack of access to health care; and

 Whereas, In New York State, these things are particularly exacerbated for farmworkers, as these workers have been continually excluded from key labor protections under legislation that dates back to the passage of New Deal legislation, specifically the Federal Labor Relations Act, in the 1930s, and the subsequent passage of a similar law in 1938 by New York State; and

 Whereas, Even after more than 80 years, farmworkers in New York State still lack the right to a day of rest, overtime pay and to bargain collectively, thus, S.2837 and A.2750 were introduced at the state-level to remedy this lack of protections and rights; and

 Whereas, S.2837, introduced by Senator Jessica Ramos, and A.2750, introduced by Assemblywoman Catherine Nolan, enacts The Farmworkers Fair Labor Practices Act, which would provide key protections and benefits for farmworkers, including: the ability to organize and advocate for themselves; the provision of overtime pay; at least 24 consecutive hours of rest each week; eligibility for workers’ compensation benefits; and eligibility for UI benefits; and

 Whereas, S.2837/A.2750 would ensure that farmworkers within New York State are compensated fairly, offered important protections other workers throughout the state have, and work and live in conditions that are respectable and decent, while allowing these workers the ability to organize and implement change in the future through the collective bargaining process; now, therefore, be it

 Resolved, That the Council of the City of New York calls upon the New York State Legislature to pass, and the New York State Governor to sign, S.2837/A.2750, enacting The Farmworkers Fair Labor Standards Act.

KK

LS 9692

2/22/19

1. Cornell University. ILR School. Policy and Issue Briefs. *New York State Prevailing Wage Law: Defining Public Work*. Available at: <https://digitalcommons.ilr.cornell.edu/briefs/59/>. [↑](#footnote-ref-1)
2. *Id.*  [↑](#footnote-ref-2)
3. Economic Policy Institute. Russel Ormiston, D. Belman, and M. Hinkel. *New York’s prevailing wage law: A cost-benefit analysis*. Available at: <https://www.epi.org/publication/new-yorks-prevailing-wage-law-a-cost-benefit-analysis/>. [↑](#footnote-ref-3)
4. Office of the New York City Comptroller. Services. For the Public. *NYC Wage Standards.* Available at: <https://comptroller.nyc.gov/services/for-the-public/nyc-wage-standards/wage-schedules/>. [↑](#footnote-ref-4)
5. Local Law 27 of 2012*.* [↑](#footnote-ref-5)
6. Economic Policy Institute. Russel Ormiston, D. Belman, and M. Hinkel. *New York’s prevailing wage law: A cost-benefit analysis*. Available at: <https://www.epi.org/publication/new-yorks-prevailing-wage-law-a-cost-benefit-analysis/>. [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. New York State Department of Labor. Workers’ Compensation Board. Workers. *Workers’ Compensation (on-the-Job Injury or Illness)*. Available at: <http://www.wcb.ny.gov/content/main/onthejob/WCLawIntro.jsp>. [↑](#footnote-ref-9)
10. *Id.* [↑](#footnote-ref-10)
11. *Id.* [↑](#footnote-ref-11)
12. City of New York. NYC Business. Licenses and Permits. *Workers’ Compensation Insurance: About*. Available at: <https://www1.nyc.gov/nycbusiness/description/workers-compensation-insurance>. [↑](#footnote-ref-12)
13. Page i. City of New York. Law Department. Workers’ Compensation Division. *Annual Report of Workers’ Compensation Claims of New York City Employees for Calendar Year 2018.* [↑](#footnote-ref-13)
14. *Id.* [↑](#footnote-ref-14)
15. *Id.* at p. iv. [↑](#footnote-ref-15)
16. New York State Attorney General Barbara D. Underwood. Labor Bureau. *Non-Compete Agreements In New York State-Frequently Asked Questions*. Available at: <https://ag.ny.gov/sites/default/files/non-competes.pdf>. [↑](#footnote-ref-16)
17. *Id.* [↑](#footnote-ref-17)
18. *Id.* [↑](#footnote-ref-18)
19. *Id.* [↑](#footnote-ref-19)
20. *Id.* [↑](#footnote-ref-20)
21. *Id.* [↑](#footnote-ref-21)
22. Restraints of trade, at its most basic level, is any activity that prevents another party from conducting business as they normally would without such a restraint. See: <https://smallbusiness.findlaw.com/business-laws-and-regulations/restraint-of-trade.html>. [↑](#footnote-ref-22)
23. Law Office of Yuriy Moshes, P.C. *What You Need to Know About Non Compete Agreement in New York*. Available at: <https://mosheslaw.com/new-york-non-compete-agreement-enforceable-terminated-without-cause/>. [↑](#footnote-ref-23)
24. *Id.* [↑](#footnote-ref-24)
25. New York State Attorney General Barbara D. Underwood. Labor Bureau. *Non-Compete Agreements In New York State-Frequently Asked Questions*. Available at: <https://ag.ny.gov/sites/default/files/non-competes.pdf>. [↑](#footnote-ref-25)
26. Law Office of Yuriy Moshes, P.C. *What You Need to Know About Non Compete Agreement in New York*. Available at: <https://mosheslaw.com/new-york-non-compete-agreement-enforceable-terminated-without-cause/>. [↑](#footnote-ref-26)
27. New York State Attorney General Barbara D. Underwood. Labor Bureau. *Non-Compete Agreements In New York State-Frequently Asked Questions*. Available at: <https://ag.ny.gov/sites/default/files/non-competes.pdf>. [↑](#footnote-ref-27)
28. *Id.* [↑](#footnote-ref-28)
29. ProSkauer Rose LLP. J. Barry and D. Leon. Law and the Workplace. *NYAG Continues Scrutiny of Overbroad Non-Compete Agreements.* Available at: <https://www.lawandtheworkplace.com/2018/10/nyag-continues-scrutiny-of-overbroad-non-compete-agreements/>. [↑](#footnote-ref-29)
30. *Id.* [↑](#footnote-ref-30)