Committee on Civil Service and Labor

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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*

May 5, 2020

**INT. NO. 1918:** By Council Members Cumbo, the Speaker (Council Member Johnson), Kallos, Van Bramer, Lander and Chin

**TITLE:** A Local Law in relation to premiums for essential workers

**INT. NO. 1923:** By Council Members Kallos, the Speaker (Council Member Johnson), Lander, Van Bramer and Chin

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to just cause employment protections for essential workers

**ADMINISTRATIVE CODE:** Amends Chapter 12 of title 20 by adding a new subchapter 7

**INT. NO. 1926:** By Council Members Lander, Kallos, Van Bramer and Chin

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to the expansion of worker coverage under the Earned Safe and Sick Time Act, and to repeal subdivision f of section 20-913 of such code, relating to exemptions from coverage under the Act, and the undesignated paragraph defining "employee" in section 20-912 of such code

**ADMINISTRATIVE CODE:** Amends Section 20-912 and repeals subdivision f of section 20-913

**PRECONSIDERED INT. NO. 1941:** By Council Member Miller

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring health insurance coverage for surviving family members of municipal employees who died as a result of a complication related to the coronavirus disease, COVID-19

**ADMINISTRATIVE CODE:** Amends Section 12-126

**RES. NO. 1285:** By Council Members Lander, Kallos and Van Bramer

**TITLE:**  Resolution calling on the New York State Legislature to pass, and the Governor to sign, legislation clarifying the test for classification of workers as independent contractors or employees by extending the test set forth in Articles 25-B and 25-C of the New York Labor Law to apply to all workers

**PRECONSIDERED RES. NO. 1322:** By Council Member Miller

**TITLE:**  Resolution calling on the New York State Legislature to pass, and the Governor to sign, legislation automatically classifying the deaths of all municipal employees who died from COVID-19 as line-of-duty deaths

**INTRODUCTION**

 On May 5, 2020, the Committee on Civil Service and Labor will hold a hearing on six pieces of legislation related to benefits and protections for essential workers, particularly during the COVID-19 pandemic. Int. No. 1918, sponsored by Council Member Laurie Cumbo and City Council Speaker Corey Johnson, is a Local Law in relation to premiums for essential workers; Int. No. 1923, sponsored by Council Member Ben Kallos and Speaker Johnson, is a Local Law in relation to just cause employment protections for essential workers; Int. No. 1926, sponsored by Council Member Lander, is a Local Law to expand worker coverage in the City’s Earned Safe and Sick Time Act; Preconsidered Int. No. \_\_\_\_\_, sponsored by Council Member I. Daneek Miller, is a Local Law in relation to extending survivorship benefits to the families of those municipal employees who have passed due to COVID-19 contracted in the course of their duty; Res. No. 1285, sponsored by Council Member Brad Lander, is a resolution calling on the State to clarify the test for classification of workers as independent contractors; and Preconsidered Res. No. \_\_\_\_\_, sponsored by Council Member I. Daneek Miller, is a resolution calling on the State Legislature to pass legislation automatically classifying the deaths of all municipal employees who died from COVID-19 as line-of-duty deaths.

Witnesses invited to testify include representatives from the New York City (NYC) Department of Consumer and Worker Protection (DCWP), various labor unions, chambers of commerce, businesses, and other stakeholders and interested parties.

**BACKGROUND**

 In the midst of the COVID-19 pandemic, New York State and New York City have been hit particularly hard; as of April 30, 2020, the state and city account for roughly 30% and 17%, respectively, of all confirmed U.S. cases.[[1]](#footnote-1) In order to slow the growth of COVID-19 cases in the state, on March 20, 2020, Governor Andrew M. Cuomo issued Executive Order 202.6, or “New York State on PAUSE”, which mandated that all non-essential businesses be closed and also delineated guidelines for what should be labeled an “essential” business.[[2]](#footnote-2) Executive Order 202.6, set forth twelve broad categories of essential business, covering certain sub-sectors of industries that include healthcare, manufacturing, construction, government services, infrastructure, and retail.[[3]](#footnote-3) Businesses designated as “essential” are allowed to keep operating at full capacity in New York State and are exempt from many of the social distancing measures contained in the Executive Order.[[4]](#footnote-4) Non-essential businesses, on the other hand, are not to operate until the Governor issues further directives.

 While essential businesses are necessary to keep central services, such as grocery stores and healthcare and sanitation services, and the economy running, employees of essential businesses, or essential workers, are inherently placed in precarious positions during a pandemic. Essential workers not only face heightened levels of exposure to COVID-19, they are overworked, often underpaid, and have little job security. Doctors and nurses, who are considered essential workers, have, for example, been warned, disciplined, and even fired for speaking out against workplace concerns about coronavirus precautions inside hospitals.[[5]](#footnote-5) In other industries, there is not enough personal protective equipment (PPE) being supplied to protect frontline workers,[[6]](#footnote-6) and certain businesses continue to put their essential workers at risk by not being transparent about how the number of COVID-19 cases in their workplace.[[7]](#footnote-7) As such, recently there have been calls to ensure that essential workers are better protected and better compensated for continuing to work while putting their lives at risk.

*Essential Workers and Hazard Pay*

To compensate essential workers for this increased personal risk and to provide additional financial security, many states, including Massachusetts,[[8]](#footnote-8) Vermont,[[9]](#footnote-9) and Pennsylvania,[[10]](#footnote-10) have either passed or introduced legislation mandating some form of hazard pay, or income premiums paid to essential workers in addition to their base salary. In Congress, Senate Democrats also introduced a proposal on April 7, 2020 that called for a COVID-19 “Heroes’ Fund”, which would provide for a $25,000 pay increase for essential frontline workers, as well as a $15,000 recruitment incentive for healthcare workers, home care specialists, and first responders.[[11]](#footnote-11) A few private businesses, such as the grocery chain Safeway, have also implemented hazard pay on their own.[[12]](#footnote-12)

However, while the provision of these funds would benefit essential workers, the sharp economic downturn caused by the pandemic poses challenges to implementing hazard pay without external assistance. An unprecedented number of layoffs across the nation has led to over 30 million new claims for unemployment benefits in the United States over the most recent six-week period alone[[13]](#footnote-13) and U.S. gross domestic product (GDP) fell 4.8% in the first quarter of 2020.[[14]](#footnote-14) New York State has not been spared this economic contraction. The Governor’s order to close non-essential businesses has meant a severe reduction in both tax revenue and profit to private businesses.[[15]](#footnote-15) In fact, an April 15, 2020 report from the New York City Independent Budget Office estimated that the city would lose $9.7 billion in revenue and 475,000 jobs over the next year.[[16]](#footnote-16) Thus, as businesses struggle to survive in the economic downturn,[[17]](#footnote-17) funding for hazard pay, and the source of such funding, are called into question.

*Essential Workers and Just Cause Protections*

Another primary issue for essential workers is whether they have sufficient protections from employment termination during this crisis. Like all other U.S. states, New York State is an at-will employment jurisdiction, meaning that either employee or an employer can terminate their working agreement at any time and for any reason, so long as that reason is not illegal, or for no reason at all. [[18]](#footnote-18) An alternative to the employment-at-will doctrine is that of “Just Cause,” in which an employer must provide a sufficient and proximate reason for terminating employment.[[19]](#footnote-19) Just Cause places a higher burden of proof on an employer to justify laying off an employee, traditionally through the application of a seven-part test.[[20]](#footnote-20) Arguments in favor of requiring Just Cause termination contend that it prevents highly capable workers from being removed from their position unnecessarily[[21]](#footnote-21), creates a better work environment[[22]](#footnote-22), and can increase labor market efficiency.[[23]](#footnote-23)

In the current pandemic, the aforementioned economic downturn has caused extremely high economic uncertainty for the majority of businesses as they struggle to maintain their previous levels of revenue.[[24]](#footnote-24) It has also created employment uncertainty for essential workers. Numerous workers in healthcare[[25]](#footnote-25) and other sectors,[[26]](#footnote-26) for example, have reported being fired for voicing their concerns about workplace safety during the pandemic.[[27]](#footnote-27) In addition, healthcare workers have seen numerous layoffs as well as a reduction in hours and pay to balance lost revenue, even though hospitals are overwhelmed with COVID-19 patients.[[28]](#footnote-28)

Just Cause legislation for essential workers would afford these employees an extra level of workplace protection, ensuring that they cannot be fired or have their hours reduced by their employer without proper justification and notification.

*Independent Contractors and Benefits*

Finally, one of the largest groups of workers that are often left out of conversations about worker protections and benefits is independent contractors. Independent contractors, also colloquially known as gig workers, are a subset of essential workers who face a unique set of challenges regarding employment benefits—during this pandemic, independent contractors have been some of the hardest hit, economically.[[29]](#footnote-29) Since independent contractors may not work regularly or consistently for a given employer, they are often not legally classified as employees; consequently, these workers are unable to partake in most benefits offered by an employer, such as health insurance, unemployment benefits, and pension plans.[[30]](#footnote-30) During the pandemic, this has also made it difficult for independent contractors to file for unemployment benefits.[[31]](#footnote-31) Compounding the problem, many workers are improperly classified as independent contractors to begin with. As many as 850,000 independent contractors in New York State may be improperly classified, leading to their exclusion from necessary benefits.[[32]](#footnote-32)

A particularly crucial benefit in the current climate is sick leave, which allows for workers to take necessary time to recover from illness or injury while maintaining their employment. In 2013, the City Council passed Local Law 46, New York City’s Earned Safe and Sick Time Act, which provides up to 40 hours a week for most workers who work more than 80 hours within the boundaries of New York City in a given year.[[33]](#footnote-33) Currently, however, the law does not cover independent contractors.

 During today’s hearing, the Committee expects to hear about how to make certain that essential workers are acknowledged, protected, and not forgotten during these unprecedented times. The Council hopes to ensure that all essential workers are getting the support and benefits they deserve for the risks they face while providing essential services to New Yorkers. To that end, the Committee would like to learn how the proposed package of legislation might help essential workers, how the legislation can be improved, what additional challenges essential workers face, and what the City can do to better protect and serve them.

**LEGISLATION**

**ANALYSIS OF INT. NO. 1918**

 Int. No. 1918 would require large essential employers to pay their essential workers a premium for each shift worked by the essential employee. The bill defines essential employers and essential workers according to Governor Cuomo’s Executive Order 202.6 and applies only to large essential employers, or those employing 100 persons or more. Per the legislation, large essential employers would be required to pay essential workers a premium amount of $30 for any shift of less than four hours, $60 for any shift between four and eight hours, and $75 for any shift of greater than eight hours.

Further, Int. No. 1918 would prohibit retaliation toward essential employees for exercising rights granted under this local law, and require large employers to post a notice of rights for essential employees and retain records of compliance for a period of three years. Essential employees would be given the right to pursue action against any violations through administrative enforcement, enforcement by corporation counsel, and private cause of action. Finally, employers who are found in violation of this legislation would be liable for a civil penalty of $1,000 for first violations, $1,500 for second violations, and $2,000 for each subsequent violation as well as any court ordered compensatory, injunctive, or declaratory relief.

This bill would take effect immediately.

**ANALYSIS OF INT. NO. 1923**

Int. No. 1923 would create a new subchapter in the Administrative Code, which would prohibit the termination of an essential employee without just cause. This bill would also provide for a private cause of action, administrative enforcement, and arbitration guidelines to mediate disputes between essential 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 essential employees who are covered by a valid collective bargaining agreement.

This bill would take effect immediately.

**ANALYSIS OF INT. NO. 1926**

Int. No. 1926 would amend the City’s Earned Safe and Sick Time Act to expand worker coverage to those defined as independent contractors, who are currently not covered by the law. Specifically, this bill would require employers to provide safe and sick leave per the current law to any persons who have provided labor or performed services for pay for more than 80 hours in a calendar year. The legislation does not apply to government employees, persons employed by a work study program or a work experience program, those compensated through a scholarship, or hourly employees.

This bill would take effect immediately and would be deemed to have been in effect as of January 1, 2020.

**ANALYSIS OF PRECONSIDERED INT. NO.**

This preconsidered legislation would extend health insurance coverage to surviving family members of deceased municipal employees who died as a natural or proximate result of a complication related to COVID-19.

 This bill would take effect immediately, provided that the health insurance coverage would be provided to the surviving spouse or domestic partner and children of any city employee who died from COVID-related complications prior to the effective date of this bill.

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Int. No. 1918

By Council Members Cumbo, the Speaker (Council Member Johnson), Kallos, Van Bramer, Lander and Chin

..Title

A Local Law in relation to premiums for essential workers

..Body

Be it enacted by the Council as follows:

Section 1. Definitions. As used in this local law, the following terms have the following meanings:

Chain business. The term “chain business” shall mean any business that is part of a group of establishments that share a common owner or principal who owns at least 30 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 section 681 of the general business law.

Director. The term “director” means the director of the office of labor standards established pursuant to section 20-a of the charter.

Essential business. The term “essential business” means any person or entity so defined by the New York state department of economic development in accordance with executive order 202.6 as issued by the governor on March 18, 2020 and extended thereafter.

Essential employee. The term “essential employee” means any person employed or permitted to work at or for an essential business. The term “essential employee” does not include any employee who is (i) salaried, (ii) covered by a collective bargaining agreement if such agreement expressly waives the provisions of this local law and provides comparable or superior benefits for essential employees, or (iii) covered by a program created pursuant to an emergency order issued by the governor that provides comparable or superior benefits for essential employees.

Essential employer. The term “essential employer” means any employer that employs a person or permits a person to work at or for an essential business.

Essential worker premium amount. The term “essential worker premium amount” shall mean $30 for any shift of less than four hours, $60 for any shift of between four and eight hours, inclusive, and $75 for any shift of greater than eight hours.

Large essential employer. The term “large essential employer” means an essential employer that employs 100 or more persons or permits 100 or more persons to work at or for such employer’s essential business. In determining the number of persons performing work for an employer for compensation during a given week, all persons performing work for compensation on a full-time, part-time or temporary basis shall be counted, provided that where the number of persons 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 persons who worked for compensation per week during the preceding calendar year, and provided further that in determining the number of persons performing work for an employer that is a chain business, the total number of employees in that group of establishments shall be counted. The term “large essential employer” does not include a business that is assigned a North American Industry Classification System code beginning with 531.

Office. The term “office” means the office of labor standards established pursuant to section 20-a of the charter.

§ 2. Premium amounts. a. A large essential employer shall provide an essential employee with the essential worker premium amount for each shift worked by the essential employee.

b. A large essential employer shall pay the essential worker premiums required under this section at such time as such employer pays an essential employee wages owed for work performed during that work week. Essential worker premium pay shall be separately noted on a wage stub or other form of written documentation and provided to the essential employee for that pay period.

§ 3. Retaliation. a. No person shall take any adverse action against an essential employee that penalizes such employee for, or is reasonably likely to deter such employee from, exercising or attempting to exercise any right protected under this local law. Taking an adverse action includes threatening, intimidating, disciplining, discharging, demoting, suspending, or harassing an essential employee, reducing the hours or pay of an essential employee, informing another essential employer, or any other person or entity that employs or permits individuals to work at or for such person or entity, that an essential employee has engaged in activities protected by this local law, and discriminating against the essential employee, including actions related to perceived immigration status or work authorization. An essential employee need not explicitly refer to this local law or the rights enumerated herein to be protected from retaliation.

§ 4. Notice and posting of rights. a. A large essential employer shall conspicuously post at any workplace or job site where any essential employee works notices informing employees of their rights protected under this local law within five days after its effective date. Such notices shall be in English and any language spoken as a primary language by at least five percent of employees at that location.

§ 5. Recordkeeping. a. A large essential employer shall retain records documenting their compliance with the applicable requirements of this local law for a period of three years and shall allow the office to access such records and other information, in accordance with applicable law and with appropriate notice, in furtherance of an investigation conducted pursuant to this local law.

b. A large essential employer’s failure to maintain, retain or produce a record or other information required to be maintained by this local law and requested by the office in furtherance of an investigation conducted pursuant to this local law that is relevant to a material fact alleged by the office in a notice of violation issued pursuant to this local law creates a rebuttable presumption that such fact is true.

§ 6. Administrative enforcement; jurisdiction and complaint procedures. a. The director shall enforce the provisions of this local law.

b. 1. Any person, including any organization, alleging a violation of this local law may file a complaint with the office within two years after the date the person knew or should have known of the alleged violation.

2. Upon receiving such a complaint, the office shall investigate it.

3. The office may open an investigation on its own initiative.

4. A person or entity under investigation shall, in accordance with applicable law, provide the office with information or evidence that the office requests pursuant to the investigation. If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the office believes that a violation of this local law has occurred, the office may attempt to resolve it through any action authorized by section 20-a of the charter. Adjudicatory powers pursuant to this local law may be exercised by the director or by the office of administrative trials and hearings pursuant to section 20-a of the charter.

5. The office shall keep the identity of any complainant confidential unless disclosure is necessary to resolve the investigation or is otherwise required by law.  The office shall, to the extent practicable, notify such complainant that the office will be disclosing the complainant’s identity before such disclosure.

§ 7. Specific administrative remedies for essential employees or former essential employees. a. For violations of this local law, the office may grant the following relief to essential employees or former essential employees:

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

2. An order directing compliance with the notice and posting of rights and recordkeeping requirements set forth in sections 4 and 5; and

3. For each violation of section 2 or section 3, payment as required under section 2, $2,000 and an order directing compliance with such sections.

 b. The relief authorized by this section shall be imposed on a per essential employee and per instance basis for each violation.

§ 8. Specific civil penalties payable to the city. a. For each violation of this local law, a large essential employer is liable for a penalty of $1,000 for the first violation and, for subsequent violations, $1,500 for the second violation and $2,000 for each succeeding violation.

b. The penalties imposed pursuant to this section shall be imposed on a per essential employee and per instance basis for each violation.

§ 9. Enforcement by the corporation counsel. The corporation counsel or such other persons designated by the corporation counsel on behalf of the office may initiate in any court of competent jurisdiction any action or proceeding that may be appropriate or necessary for correction of any violation issued pursuant to this local law, including actions to secure permanent injunctions, enjoining any acts or practices that constitute such violation, mandating compliance with the provisions of this local law or such other relief as may be appropriate.

§ 10. Private cause of action. a. Any person, including any organization, alleging a violation of any provisions of this local law may bring a civil action, in accordance with applicable law, in any court of competent jurisdiction.

b. Remedies. Such court may order compensatory, injunctive and declaratory relief, including the following remedies for violations of this local law:

1. An order directing compliance with the posting and recordkeeping requirements set forth in sections 4 and 5;

2. Rescission of any discipline issued in violation of section 3;

3. Reinstatement of any essential employee terminated in violation of section 3;

4. Payment of back pay for any loss of pay or benefits resulting from discipline or other action taken in violation of section 3;

5. Other compensatory damages and any other relief required to make the essential employee whole; and

6. Reasonable attorney’s fees.

c. A civil action under this section shall be commenced within two years after the date the person knew or should have known of the alleged violation.

d. 1. Any person filing a civil action shall simultaneously serve notice of such action and a copy of the complaint upon the office. Failure to so serve a notice does not adversely affect any plaintiff’s cause of action.

2. An essential employee need not file a complaint with the office pursuant to subdivision b of section 7 before bringing a civil action; however, no person shall file a civil action after filing a complaint with the office unless such complaint has been withdrawn or dismissed without prejudice to further action.

3. No person shall file a complaint with the office after filing a civil action unless such action has been withdrawn or dismissed without prejudice to further action.

4. The commencement or pendency of a civil action by an essential employee does not preclude the office from investigating the employer or commencing, prosecuting, or settling a case against the essential employer based on some or all of the same violations.

§ 11. Civil action by corporation counsel for pattern or practice of violations. a. 1. Where reasonable cause exists to believe that a large essential employer is engaged in a pattern or practice of violations of this local law, the corporation counsel may commence a civil action on behalf of the city in a court of competent jurisdiction.

2. The corporation counsel shall commence such action by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief.

3. Such action may be commenced only by the corporation counsel or such other persons designated by the corporation counsel.

4. Nothing in this section prohibits (i) the office from exercising its authority under sections 5 through 8, or (ii) a person alleging a violation of this local law from filing a complaint pursuant to section 6 or a civil action pursuant to section 10 based on the same facts pertaining to such a pattern or practice, provided that a civil action pursuant to this section shall not have previously been commenced.

b. The corporation counsel may initiate any investigation to ascertain such facts as may be necessary for the commencement of a civil action pursuant to subdivision a of this section, and in connection therewith shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as are deemed necessary.

c. In any civil action commenced pursuant to subdivision a of this section, the trier of fact may impose a civil penalty of not more than $15,000 for a finding that a large essential employer has engaged in a pattern or practice of violations of this local law. Any civil penalty so recovered shall be paid into the general fund of the city.

§ 12. This local law takes effect immediately.

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Int. No. 1923

By Council Members Kallos, the Speaker (Council Member Johnson) and Lander

..Title

A Local Law to amend the administrative code of the city of New York, in relation to just cause employment protections for essential workers

..Body

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

JUST CAUSE 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.

Essential business. The term “essential business” means any person or entity so defined by the New York state department of economic development in accordance with executive order 202.6 as issued by the governor on March 18, 2020 and extended thereafter.

Essential employee. The term “essential employee” means any person employed or permitted to work at or for an essential business.

Essential employer. The term “essential employer” means any employer that employs a person or permits a person to work at or for an essential business.

Just cause. The term “just cause” means sufficient cause for discharging an essential employee, such as the employee’s failure to satisfactorily perform job duties or employee misconduct that is demonstrably and materially harmful to the essential employer’s business interests.

Probation period. The term “probation period” means a period of time set by an essential employer, not to exceed 30 days from the time of hire of an essential employee, in which the essential employer and essential employee 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 an essential employee’s failure to satisfactorily perform such 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 an essential employer from terminating an essential employee immediately for a failure or misconduct constituting just cause.

Reduction in hours. The term “reduction in hours” means a reduction in an essential employee’s hours of work totaling at least 15 percent of the employee’s weekly work schedule.

§ 20-1272 Prohibition of wrongful discharge. An essential employer shall not discharge an essential employee who has completed such essential employer’s probation period without just cause.

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

1. The essential employee knew or should have known of the essential employer’s policy, rule or practice;

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

3. The essential employer’s policy, rule or practice was reasonable and applied consistently; and

4. The essential employer undertook a fair and objective investigation.

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

c. The essential employer shall provide a written explanation, including any non-hearsay evidence to support the decision, to any terminated essential employee of the precise reasons for the just cause termination within one week of termination. In determining whether an essential employer had just cause for termination, the office may not consider any reasons not included in such written explanation.

d. The essential 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. An essential employee covered by this subchapter may bring a civil action, in accordance with applicable law, in any court of competent jurisdiction pursuant to section 20-1211.

b. In addition to section 20-1211, in determining whether an employee has been terminated for just cause, a court of competent jurisdiction shall consider, in addition to any other relevant factors, whether:

1. The essential employee knew or should have known of the essential employer’s policy, rule or practice;

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

3. The essential employer’s policy, rule or practice was reasonable and applied consistently; and

4. The essential employer undertook a fair and objective investigation.

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

d. The essential employer shall provide a written explanation, including any non-hearsay evidence to support the decision, to any terminated essential employee of the precise reasons for the just cause termination within one week of termination. In determining whether an essential employer had just cause for termination, a fact finder may not consider any reasons not included in such written explanation.

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

f. 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 an essential 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 essential employer at any of the essential 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 essential employees;

2. Two essential employee advocates;

3. Two essential employers; and

4. Two essential employer advocates.

d. If an insufficient number of essential employees, essential employee advocates, essential employers or essential 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 an essential 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 an essential employee has been terminated for just cause, an arbitrator shall consider, in addition to any other relevant factors, whether:

1. The essential employee knew or should have known of the essential employer’s policy, rule or practice;

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

3. The essential employer’s policy, rule or practice was reasonable and applied consistently; and

4. The essential employer undertook a fair and objective investigation.

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

l. In determining whether a essential employer had just cause for termination, an arbiter may not consider any reasons not included in the written explanation provided pursuant to subdivision c of section 21-1273.

m. The essential 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. An essential employee terminated for just cause shall be entitled to schedule pay premiums pursuant to section 20-1222, as applicable.

§ 20-1277 Exemptions. a. This subchapter does not apply to any essential employee who (i) is covered by a collective bargaining agreement if such agreement expressly waives the provisions of this subchapter and provides comparable or superior benefits for said employees or (ii) is currently employed within a probation period.

b. This subchapter does not 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 essential employee terminated and payment of back pay for any loss of pay or benefits resulting from the wrongful discharge.

§ 3. Subdivision 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:

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 immediately.

NJC

LS # 1856

4/20/20 2:02AM

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Int. No. 1926

By Council Members Lander and Kallos

..Title

A Local Law to amend the administrative code of the city of New York, in relation to the expansion of worker coverage under the Earned Safe and Sick Time Act, and to repeal subdivision f of section 20-913 of such code, relating to exemptions from coverage under the Act, and the undesignated paragraph defining “employee” in section 20-912 of such code

..Body

Be it enacted by the Council as follows:

Section 1. Section 20-912 of the administrative code of the city of New York, as amended by local law number 199 for the year 2017, is amended by REPEALING the undesignated paragraph defining “employee” and amending the definition of “employer” to read as follows:

"Employer" shall mean any "employer" as defined in subdivision (3) of section 190 of the labor law, or any other person who employs a person deemed an employee under section 20-912.1, 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. 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.

§ 2. Chapter 8 of title 20 of the administrative code of the city of New York is amended by adding a new section 20-912.1 to read as follows:

§ 20-912.1 Presumption of employment. a. Solely for the purposes of this chapter, any person providing labor or services for remuneration within the city of New York for more than 80 hours in a calendar year, including labor or services performed in a transitional jobs program pursuant to section 336-f of the social services law, shall be considered an employee, unless the hiring entity demonstrates that all of the following conditions are satisfied:

1. The person is free from the control and direction of the hiring entity in connection with the performance of the labor or services, both under the contract for the performance of the work and in fact;

2. The person performs labor or services that are outside the usual course of the hiring entity’s business; and

3. The person is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the labor or services performed.

b. Notwithstanding subdivision a, this chapter shall not apply to:

1. A person who performs work as a participant in a work experience program pursuant to section 336-c of the social services law.

2. A person who is 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 section 92 of the general municipal law or section 207 of the county law.

3. A person engaged in a work study program under section 2753 of title 42 of the United States code.

4. A person compensated by or through a qualified scholarship as defined in section 117 of title 26 of the United States code.

5. An independent contractor who does not qualify as an employee under subdivision a.

6. An hourly professional employee.

§ 3. Subdivision f of section 20-913 of the administrative code of the city of New York is REPEALED.

§ 4. Subdivisions g, h, i and j of section 20-913 of the administrative code of the city of New York are redesignated subdivisions f, g, h and i, respectively.

§ 5. Section 20-919 of the administrative code of the city of New York is amended by adding a new subdivision d to read as follows:

d. Notwithstanding subdivision a of this section, all employers who were not subject to the requirements of this chapter before the enactment date of the local law that added this subdivision shall provide employees with a notice of rights as required under paragraph 1 of subdivision a of this section within 60 days of such enactment date.

§ 6. This local law takes effect immediately and is deemed to have been in effect as of January 1, 2020.

SG

LS #14408

4/15/20

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Preconsidered Int. No.

By Council Member Miller

..Title

A Local Law to amend the administrative code of the city of New York, in relation to requiring health insurance coverage for surviving family members of municipal employees who died as a result of a complication related to the coronavirus disease, COVID-19

..Body

Be it enacted by the Council as follows:

 Section 1. Subparagraph (i) of paragraph (2) of subdivision b of section 12-126 of the administrative code of the city of New York, as amended by local law number 32 for the year 2020, is amended to read as follows:

(i) Where the death of a city employee is or was the natural and proximate result of an accident or injury sustained while in the performance of duty, or where accidental death benefits have been awarded in connection with a qualifying World Trade Center condition as defined in paragraph (a) of subdivision 36 of section 2 of the retirement and social security law, or where the death of a city employee is or was the natural and proximate result of a complication related to the coronavirus disease, COVID 19,the surviving spouse or domestic partner, until he or she dies, and the children under the age of [nineteen] 19 years and any such child who is enrolled on a full-time basis in a program of undergraduate study in an accredited degree-granting institution of higher education until such child completes his or her educational program or reaches the age of [twenty-six] 26 years, whichever comes first, shall be afforded the right to health insurance coverage, and health insurance coverage which is predicated on the insured's enrollment in the hospital and medical program for the aged and disabled under the social security act, as is provided for city employees, city retirees and their dependents as set forth in paragraph [one] (1) of this subdivision. Provided, however, and notwithstanding any other provision of law to the contrary, and solely for the purposes of this subparagraph, a member otherwise covered by this subparagraph shall be deemed to have died as the natural and proximate result of an accident or injury sustained while in the performance of duty upon which his or her membership is based, provided that such member was in active service upon which his or her membership is based at the time that such member was ordered to active duty pursuant to Title 10 of the United States Code, with the armed forces of the United States or to service in the uniformed services pursuant to Chapter 43 of Title 38 of the United States Code, and such member died while on active duty or service in the uniformed services on or after [June fourteenth, two thousand five] June 14, 2005 while serving on such active military duty or in the uniformed services. For purposes of this subparagraph, “city employee” shall include employees of the board of education.

§ 2. This local law is effective immediately; provided, however, that the health insurance coverage granted by section one of this local law shall be provided to the surviving spouse or domestic partner and children of any city employee who died prior to the effective date of this local law and shall commence prospectively on such effective date; and provided further that the amendments made to subparagraph (i) of paragraph (2) of subdivision b of section 12-126 of the administrative code of the city of New York shall not affect the continuation of health insurance coverage awarded prior to the effective date of this local law.

NLB

LS #14556

4/29/20

Res. No. 1285

..Title

Resolution calling on the New York State Legislature to pass, and the Governor to sign, legislation clarifying the test for classification of workers as independent contractors or employees by extending the test set forth in Articles 25-B and 25-C of the New York Labor Law to apply to all workers.

..Body

By Council Members Lander and Kallos

Whereas, Workers classified as independent contractors lack a significant number of basic worker protections that are granted to employees, including, but not limited to, healthcare subsidies, unemployment benefits, pensions, overtime pay, paid parental or sick leave, and guaranteed minimum wage; and

Whereas, Misclassification of employees as independent contractors is frequently practiced by businesses seeking to avoid the burden of paying benefits to employees and to avoid paying unemployment and social security taxes on the wages of a worker that is classified as an employee; and

Whereas, According to a report by The New School Center for New York City Affairs, an estimated 850,000 low-paid independent contractors in New York State may be misclassified and should properly be classified as employees; and

Whereas, According to a joint report from Rockbridge Associates and Fiverr, over 550,000 independent contractors reside in the New York City metropolitan area as of 2018, which is the highest number of independent contractors of any city in the United States; and

Whereas, Low-paid independent contractors can be subject to extreme economic insecurity, with median annual earnings of $20,000, and with 1 in 4 workers on Medicaid and 1 in 5 who are uninsured; and

Whereas, Workers who are misclassified have not shared in New York State’s minimum wage increases; and

Whereas, Workers classified as independent contractors face the additional burden of being responsible for the employer’s share of taxes, as well as self-employment tax; and

Whereas, in New York City, 2 out of 3 low-paid independent contractors who are likely to be misclassified are people of color; and

Whereas, Misclassified workers who receive work through a “digital marketplace” constitute at most 20 percent of workers misclassified as independent contractors in New York State; and

Whereas, The State of New York has adopted the New York State Construction Industry Fair Play Act (Labor Law Article 25-B), and the New York State Commercial Goods Transportation Industry Fair Play Act (Labor Law Article 25-C), both of which create a presumption of employment that places the burden of proof on employers to classify workers as independent contractors; and

Whereas, New York’s presumption of employment in construction and commercial trucking establishes that an employer may only label a worker as an independent contractor if it can demonstrate that (1) the individual is free from control and direction in performing the job, both under the contract and in fact, (2) the service must be performed outside the usual course of business for which the service is performed, and (3) the individual is customarily engaged in an independently established trade, occupation, profession or business that is similar to the service at issue; and

Whereas, The presumption of employment codified in the New York State Construction Industry Fair Play Act has helped to mitigate the industry’s crisis of misclassification, with the number of independent contractors declining by 14 percent over the past decade while the number of payroll employees rose 9 percent; and

Whereas, Ensuring protections for workers by classifying them as employees rather than independent contractors allows them a greater degree of financial security, as well as access to necessary benefits that enhance their quality of life; and

Whereas, Codifying a generally applicable presumption of employment for classification of workers as independent contractors or employees, as already applicable to certain industries pursuant to the aforementioned provisions of the New York Labor Law, would extend employer protections to the many workers in the state who are improperly classified as independent contractors; now, therefore, be it

Resolved, That the Council of the City of New York calls on the New York State Legislature to pass, and the Governor to sign, legislation clarifying the test for classification of workers as independent contractors or employees by extending the test set forth in Articles 25-B and 25-C of the New York Labor Law to apply to all workers.

LS #12631

04/02/20

TWN

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Preconsidered Res. No.

..Title

Resolution calling on the New York State Legislature to pass, and the Governor to sign, legislation automatically classifying the deaths of all municipal employees who died from COVID-19 as line-of-duty deaths.

..Body

By Council Member Miller

Whereas, In 2019 and 2020, the disease COVID-19, also known as coronavirus, spread rapidly worldwide, leading the President of the United States to declare a national emergency, and the World Health Organization to declare the outbreak a global pandemic; and

Whereas, The impact of the coronavirus pandemic has been especially severe in the State of New York, which reports nearly 300,000 confirmed COVID-19 cases and 17,638 confirmed COVID-19 fatalities as of April 28, 2020, constituting roughly one-third of all confirmed coronavirus cases in the United States; and

Whereas, According to the New York City Department of Health and Mental Hygiene, New York City reports 11,820 confirmed COVID-19 deaths and 5,395 probable COVID-19 deaths, as of April 27, 2020; and

Whereas, New York City is highly reliant on a large staff of municipal employees that totals over 325,000 workers; and

Whereas, Many municipal workers in New York City, including police officers, firefighters, emergency medical services personnel, sanitation workers, healthcare workers, and teachers are essential workers whose occupational responsibilities preclude working from home; and

Whereas, During the COVID-19 pandemic, these workers face heightened risk and exposure to COVID-19 as a result of the nature of their positions; and

Whereas, An April 22, 2020 article in the *New York Times* reports that at least 209 City workers had died due to coronavirus at the time of publication, including 63 employees of the Department of Education, 33 employees of City hospitals, and 31 New York Police Department employees; and

Whereas, A line-of-duty death refers to a death that resulted from and is attributable to one’s employment; and

Whereas, For individuals whose death is classified as a line-of-duty death, additional benefits are provided to their surviving family, such as increased pension and health coverage; and

Whereas, As of April 29, 2020, a municipal employee’s death as a result of COVID-19 is only classified as a line-of-duty death if the employee’s surviving family members can prove that the individual more likely than not contracted COVID-19 while on duty; and

Whereas, Classifying the deaths of all municipal workers who have died from COVID-19 as line-of-duty deaths would grant additional benefits and resources to families of the deceased, and would alleviate the burden of having to prove a family member’s death was directly attributable to their work; and

Whereas, Classifying the deaths of municipal workers who have died from COVID-19 as line-of-duty deaths would also serve as a form of recognition for the sacrifices of municipal employees who lost their lives while serving their government and community during a time of crisis; now, therefore, be it

Resolved, That the Council of the City of New York calls on the New York State Legislature to pass, and the Governor to sign, legislation automatically classifying the deaths of all municipal employees who died from COVID-19 as line-of-duty-deaths.

LS #14868

04/30/20

TWN

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