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###### **THE COUNCIL OF THE CITY OF NEW YORK**

**Committee Report of the Governmental Affairs Division**

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**COMMITTEE ON CONSUMER AFFAIRS AND BUSINESS LICENSING**

**Hon. Diana Ayala, Chair**

##### September 15, 2021

**INT. NO. 499:** By Council Member Koslowitz

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to allowing corporations, partnerships and other business entities to obtain newsstand licenses

**INT. NO. 508:** By Council Members Rosenthal, Menchaca, Kallos, Cornegy Jr., and Ayala

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to the prohibition of requiring low-wage workers to enter into covenants not to compete and also to require employers to notify potential employees of any requirement to enter into a covenant not to compete

**INT. NO. 974:** By Council Members Rosenthal, Miller, Rivera, Cornegy Jr., and Ayala

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to the disclosure in employment advertisements of mandatory arbitration and non-disparagement clauses in employment contracts

**INT. NO. 2318:** By Council Members Ayala, Brannan, Moya, Chin, Gibson, Kallos, Rosenthal, Salamanca Jr., Miller, Lander, Menchaca, Rivera, Powers, Riley, Dinowitz, Levine, Koslowitz, Reynoso, Adams, Holden, Levin, Feliz, Cumbo, Louis, Ampry-Samuel and Cornegy Jr.

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to the licensing of labor service providers

**INT. NO. 2397:** By Council Members Moya and Kallos

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to severance pay for hotel service employees

1. **INTRODUCTION**

On September 15, 2021, the Committee on Consumer Affairs and Business Licensing, chaired by Council Member Diana Ayala, will hold a hearing on five pieces of legislation. The five pieces of legislation include: (1) Introduction Number 499 (Int. 499), in relation to allowing corporations, partnerships and other business entities to obtain newsstand licenses; (2) Introduction Number 508 (Int. 508), in relation to the prohibition of requiring low-wage workers to enter into covenants not to compete and also to require employers to notify potential employees of any requirement to enter into a covenant not to compete; (3) Introduction Number 974 (Int. 974), in relation to the disclosure in employment advertisements of mandatory arbitration and non-disparagement clauses in employment contracts; (4) Introduction Number 2318 (Int. 2138), in relation to the licensing of labor service providers; and (5) Introduction Number 2397 (Int. 2397), in relation to severance pay for hotel service employees. Those invited to testify at the hearing include representatives of the Department of Consumer and Worker Protection (DCWP), advocates, nonprofit organizations, Chambers of Commerce, unions, and labor placement businesses.

1. **BACKGROUND**
2. **Employment Contract Clauses**

*Non-Disparagement and Forced Arbitration Clauses*

Non-disparagement clauses are common features of employment contracts, separation clauses and settlement agreements, especially in the private sector.[[1]](#footnote-1) Essentially, such clauses prevent employees (past or present) from communicating anything negative about their employer. The type of communication covered can include all types of written and spoken communication, from a conversation with a friend, to a social media post, or an interview with a media outlet.[[2]](#footnote-2) Furthermore, even if the claims made by the employee are accurate and even supported by evidence, if they have signed a non-disparagement clause they can be sued by their employer if they make negative comments. Non-disparagement agreements shield businesses from claims about toxic or even abusive workplaces, and keep new employees in the dark about such allegations.

In addition to non-disparagement clauses, employers may use mandatory arbitration clauses to minimize remedies for their employees. Similar to non-disparagement clauses, these agreements are typically presented to new employees when they are offered their position. If signed, the employee is bound to settle any disputes with their employer through an arbitration process, rather than the court process. According to data from 2018, more than half of the Country’s non-union, private sector employees are subject to mandatory arbitration, or about 60 million people.[[3]](#footnote-3) This same research showed that “[m]andatory arbitration is more common in low-wage workplaces. It is also more common in industries that are disproportionately composed of women workers and in industries that are disproportionately composed of African American workers.”[[4]](#footnote-4)

Unscrupulous employers may see a benefit from imposing forced arbitration clauses on their employees, especially when combining them with collective action waivers. Recent NELP research found that 98 percent of workers, when faced with the requirement to undergo arbitration without the collective action of their peers, will drop a claim against their employer.[[5]](#footnote-5) Employers, who hire the arbitrator, likely influence the outcomes. Available data on forced arbitration suggests that employees are significantly less likely to win in mandatory arbitration (21.4 percent) than they would be in federal (36.4 percent) or state (51 percent) courts.[[6]](#footnote-6)

Both non-disparagement and mandatory arbitration clauses shift power away from workers. Businesses are protected from negative publicity through non-disparagement clauses, even when there are serious cases of harassment and abuse, and workers are further disenfranchised by losing the ability to take their problematic employer to court, if they are subject to mandatory arbitration.

Since the height of the #MeToo movement, these types of employment clauses have come under more scrutiny. At the state level, the New York legislature enacted A08421, which prohibits non-disclosure and mandatory arbitration clauses in cases that relate to discrimination or harassment.[[7]](#footnote-7)

*Non-Compete Clauses*

Like non-disparagement and forced arbitration clauses, non-compete clauses can present a hardship for an employee, impacting their future career path. Under such agreements, an employee who leaves their job is prevented from working for a competitive employer or starting a similar business themselves, until after a certain amount of time has passed. Non-compete clauses are typically common in industries where intellectual property is a vital asset; however, they are also becoming more common in low-paying jobs.[[8]](#footnote-8)

According to research from the Economic Policy Institute, nearly half of all business respondents to a survey analyzing such agreements said that they had employees that were subject to non-compete clauses.[[9]](#footnote-9) The study estimates that between approximately 30 to 50 percent of private sector workers are subject to non-compete clauses.[[10]](#footnote-10) This same study also revealed that non-compete clauses were common, even for workers earning less than $13 per hour, as illustrated in the table below.

**Non-compete agreements in US workplaces, by average employee pay level**[[11]](#footnote-11)

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The Office of Economic Policy, within the federal Department of the Treasury, also examined the use of non-compete clauses. In their 2016 report, the Treasury concluded that, while there are some social benefits to employing non-compete clauses, there is a negative cost to workers. This means that:

* “Worker bargaining power is reduced after a non-compete is signed, possibly leading to lower wages.
* Non-competes sometimes induce workers to leave their occupations entirely, foregoing accumulated training and experience in their fields.
* Reduced job churn caused by non-competes is itself a concern for the U.S. economy. Job churn helps to raise labor productivity by achieving a better matching of workers and firms, and may facilitate the development of industrial clusters like Silicon Valley.”[[12]](#footnote-12)

Citing the Treasury report, the New York City Bar has recommended legislation to regulate the use of non-compete clauses, especially for lower paid workers.[[13]](#footnote-13) The New York Attorney General, meanwhile, has reached settlements with a number of businesses that were enforcing overly broad non-compete clauses against employees who did not have access to trade secrets or confidential information.[[14]](#footnote-14) For example, prior to the settlement, a sandwich shop was prohibiting its workers from working at any other establishment that had at least ten percent of its business from sandwiches for two years, while a co-working space was preventing its cleaners from working for any other competitor.[[15]](#footnote-15) This type of misuse of non-compete clauses motivated the New York Attorney General at the time to also recommend legislation to prohibit the use of such agreements for workers earning less than $75,000.[[16]](#footnote-16)

1. **Labor Placement Businesses**

Employment agencies and other labor placement businesses connect New Yorkers seeking employment opportunities with employers in need of workers. In New York State alone, staffing agencies assign an estimated 150,700 people to jobs on a temporary or contract basis each week, and employ over 776,000 people.[[17]](#footnote-17) However, these agencies can take many forms, with varying business models causing considerable impacts on the employee. One of the most common types is referred to as an “employment agency.” In New York, for-profit employment agencies connect people to jobs for a fee. These agencies do not serve as an employer, but rather provide a service to an individual seeking work.[[18]](#footnote-18) Employment agencies typically aim to provide individuals with long-term employment.[[19]](#footnote-19) Agencies operating in this manner are licensed by New York State.[[20]](#footnote-20)

Another common type of business model is a temporary employment agency, commonly known as “temp agency,” or “staffing agency” which serve as the employer for the jobseeker themselves and make their employees available to businesses through short-term contracts, or indefinite temporary positions.[[21]](#footnote-21) Temporary agencies offer both employers and individuals seeking employment a number of advantages. For employers in need of immediate short-term staffing, temp agencies can access a wide applicant pool to fill positions and can reduce the employers’ hiring costs,[[22]](#footnote-22) and for unemployed individuals, temp agencies can facilitate quick employment in a difficult job market.[[23]](#footnote-23) According to the American Staffing Association, 36 percent of the 16 million workers employed through staffing agencies in America work in industrial-related fields,[[24]](#footnote-24) 24 percent work in clerical and administrative work,[[25]](#footnote-25) 21 percent work in professional-managerial positions,[[26]](#footnote-26) 11 percent work in engineering, information technology or science,[[27]](#footnote-27) and eight percent work in health care.[[28]](#footnote-28)[[29]](#footnote-29) Around 65 percent of staffing employees work in an industry either to find short-term employment between jobs or hoping the temporary position leads to long-term employment.[[30]](#footnote-30)

Temp agencies have expanded in recent years in the United States, and a certain type of worker provision service that shares common characteristics with the traditional temp agency model has become more common.[[31]](#footnote-31) These worker providers, known as “labor brokers” or “labor contractors,” typically employ workers and assume many of the employment-related responsibilities, like a temp agency, but target unskilled workers for the provision of manual labor. As with temp agencies, the workers are hired to provide labor to other entities.[[32]](#footnote-32) The company that contracts for the use of the laborers will pay the labor broker for the performance of some or the entire project.[[33]](#footnote-33) Temp agencies using the labor broker model have become common in a variety of industries, including timber processing, garment manufacturing, poultry processing, agriculture, janitorial, and industries utilizing day laborers.[[34]](#footnote-34)

Labor brokers are also common in the construction industry, where brokers, sometimes referred to as “body shops,” supply workers to real estate developers. A sample contract between Construction Staffing Solutions LLC (CSS) and their client companies provides an example of this model. The client company “agrees and shall make timely payment to CSS of an agreed hourly rate for each hour worked by each of CSS[’] employees, subject to [a set of] terms. CSS pay[s] all applicable payroll taxes and provide worker's compensation insurance to CSS employees as required by all applicable laws and regulations.”[[35]](#footnote-35) CSS is paid by the client company and, in turn, would pay the wages of their laborers.

The structure of labor brokers allows for the streamlined production of labor and job placements for otherwise unemployed New Yorkers, but it also compartmentalizes employer responsibilities in a way that can be harmful for workers. Labor brokers like body shops can pay their workers minimum wage and provide scant worker benefits, while assuming very little responsibility for conditions at the worksites to which the workers are assigned. Companies that contract for the use of the body shops’ laborers gain cheap and easy access to labor, without any employer responsibilities and a lack of knowledge about how the workers are treated outside of the limited bounds of the worksite contract. The Occupational Safety and Health Administration (OSHA) has articulated a number of concerns about the use of subcontracted workers through the body shop model,[[36]](#footnote-36) including: that employers (i.e. the labor brokers/contractors) may use temporary workers as a way to avoid meeting all of their obligations under worker protection laws; that temporary workers are often not given adequate safety and health training by either the temporary staffing agency or the host employer; or that subcontracted workers are more vulnerable to workplace retaliation than are workers directly employed by a company.[[37]](#footnote-37) If any of these worker abuses are in fact the case, the larger client company could potentially claim not to have knowledge of them.

Former Congressman Joe Kennedy introduced H.R. 7638 in the 116th Congress to provide greater legal rights for temporary workers, though the bill was never passed. The bill would provide a legal framework to protect temporary workers, including requiring employers to pay temporary workers equal pay for work that is similar to the work performed by permanent workers. Employers would also be required to be transparent with temporary workers about the terms and conditions of temp workers’ assignments, and provide temp workers health and safety training. Temp agencies would need to register with the Department of Labor and record information about their workforce, including the race and gender of their workers and the percentage of temp workers who transition to permanent positions.[[38]](#footnote-38)

1. **Licensing of Labor Placement Businesses**

Employment agencies operating in New York State are licensed under Article 11 of the New York General Business Law.[[39]](#footnote-39) The NYS Commissioner of Labor licenses employment agencies operating outside of New York City, and employment agencies within New York City are licensed by DCWP pursuant to a grant of authority from the State.[[40]](#footnote-40) Primarily, the State licensing statute defines an “employment agency” as one that, “for a fee, procures or attempts to procure: (1) employment or engagements for persons seeking employment or engagements, or (2) employees for employers seeking the services of employees.”[[41]](#footnote-41) There are other state provisions applying or exempting the State’s coverage to various employment agency models.[[42]](#footnote-42)

While the State employment agency licensing scheme provides government oversight and accountability over the industry, labor brokers generally are not subject to it. Labor brokers do not charge fees to employees to find them work with other entities; labor brokers instead generate profit by being paid for providing the labor of their own employees. Typically, the amount, per hour, paid to the labor broker is much larger than what the broker then pays to its employees.[[43]](#footnote-43) According to the City, temporary employment agencies that contract out their own employees to do work for other businesses do not require an employment agency license.[[44]](#footnote-44)

New York State has also codified a registration scheme for professional employer organizations (PEOs), which employ all or a majority of the workers, and provide services performed by the workers to a client on an ongoing basis.[[45]](#footnote-45) Employer responsibilities, including “hiring, firing and disciplining [employees]” is negotiated between the PEO and client.[[46]](#footnote-46) Such scheme similarly does not apply to a typical labor broker model—or one encompassing the “body shops” as described above.

While the labor broker industry is currently unlicensed, labor brokers are still required to comply with various federal, state, and City laws and regulations. Pursuant to the Occupational Safety and Health Act of 1970 (OSH Act), employers are responsible for providing their employees with safe working conditions.[[47]](#footnote-47) Employers are also required to provide safety trainings for employees in a language that workers understand.[[48]](#footnote-48) Labor brokers operating in the City are required to follow State labor laws. NYS labor protections ensure the right of workers to earn a minimum wage, and protect workers from unpaid wages and against retaliation for reporting labor law violations.[[49]](#footnote-49) At the City level, body shops are required to complete Site Safety Plans on all jobs requiring a Construction Superintendent – projects that involve the construction of new buildings.[[50]](#footnote-50) As part of the Site Safety Plan, labor brokers must ensure that all workers have successfully completed the necessary OSHA trainings on construction industry safety and health.[[51]](#footnote-51) Local Law 196 of 2017 mandated that workers on all construction sites that have Site Safety Plans complete a minimum of 40 hours of training by September 1, 2020.[[52]](#footnote-52)

1. **LABOR BROKERS: ISSUES AND CONCERNS**
2. **Exploitation of Vulnerable Groups**

Unlike employment agencies, which are licensed by the City, there is very little oversight of labor brokers. This creates an environment ripe for exploitation, and unions and advocacy groups have been sounding the alarm for years about vulnerable populations taken advantage of by unscrupulous labor brokers. Justice-affected workers, whether recently released from prison, on parole, or with a criminal record, have a trying time finding steady work. Furthermore, parolees may require employment as a condition of their parole.[[53]](#footnote-53) Around 35,000 New Yorkers are under parole supervision on any day,[[54]](#footnote-54) and New York State re-incarcerates more New Yorkers on parole[[55]](#footnote-55) or technical rule violations[[56]](#footnote-56) than any other state in the United States.[[57]](#footnote-57) Violating parole rules can lead a paroled New Yorker to be held in jail for several months with no right to bail.[[58]](#footnote-58) In NYC, Black and Latinx residents on parole are 12 and four times more likely, respectively, to be re-incarcerated for technical violations than white residents on parole.[[59]](#footnote-59) The ability for a paroled resident to reject an unsafe or low paid job is therefore undercut by the threat of re-incarceration. This makes them particularly vulnerable to job opportunities that, while keeping them employed, only offer minimal pay, few benefits and poor working conditions. According to researchers, unions and advocates, New York City’s multi-billion-dollar real estate development industry relies on the exploited labor of formerly incarcerated individuals to such an extent that,[[60]](#footnote-60) practices akin to what is known as “convict leasing”[[61]](#footnote-61) or “resentencing” in terms of labor, seem likely.[[62]](#footnote-62)

Immigrants, either in the country already or hoping to migrate, undocumented residents, and guest workers are also highly vulnerable to exploitation by labor brokers. Lacking documentation, as well as having language and cultural barriers, and a highly competitive labor market, puts immigrants and undocumented residents plum in the path of labor contractors.[[63]](#footnote-63) As discussed above, in the construction industry, the target population tends to be justice-affected workers. Furthermore, while it is common for labor brokers to target low-paid workers in fields for which day laborers are used, such as construction and agriculture, labor brokers have also begun engaging the rapidly-expanding technology industry that makes use of temporary H-1B visas.[[64]](#footnote-64) According to an in-depth investigation by The Center for Investigative Reporting, between 2000 and 2013 nearly $30 million was illegally withheld from 4,400 tech workers, brought to the country on H-1B visas.[[65]](#footnote-65)

Although the exploitation of workers by unscrupulous labor brokers cuts across industries and salary brackets, it is predominately people of color who are most negatively impacted. In New York, Black people are the most overrepresented racial and ethnic group in the carceral system, with an incarceration rate per percent of the population at 7.5 times that of White New Yorkers.[[66]](#footnote-66) Hispanic, Native American and Alaskan Natives are also overrepresented and have rates higher than White New Yorkers.[[67]](#footnote-67) Considering immigrants and undocumented residents among this group of exploited laborers, it is clear that abuse by labor brokers goes beyond a worker-rights issue, but potentially presents a race and equity issue. On the international stage, unscrupulous labor brokers are also seen as key players in perpetuating human trafficking.[[68]](#footnote-68) Two justice-affected New Yorkers, Danny Coley and John Simmons, published an op-ed detailing the abuse they experienced working at a body shop: “Body shops use our incarceration histories and parole status to coerce us into dangerous jobs on nonunion construction sites that often condemn us to poverty.” They further stated, the body shop industry is “a system of racial exploitation with a long history of profiting from Black and brown workers. You might not see our chains when you pass a nonunion construction site, but believe us when we tell you they are there.”[[69]](#footnote-69)

1. **Poor Pay and Conditions**

The issue of race is so apparently built into this system of exploitation that some workers, employed by body shops in New York, report being segregated from their fellow employees based on race. For example, according to several Black workers employed by a body shop called Trade Off, they were employed by the body shop operating under that name; however, Trade Off established a second labor brokerage company, called Trade Off Plus. The workers at Trade Off, who were predominately Black, were paid $15 per hour, while their colleagues at Trade Off Plus were paid $20 per hour.[[70]](#footnote-70)

Underpayment is a common occurrence for those employed by labor brokers. Advocates argue that the whole labor middleman system relies on this gap. As alleged by the National Employment Law Project (NELP), labor brokers “compete for business with low bids that depend on driving labor costs lower and worker productivity higher. Many contractors [labor brokers] do not earn enough money to pay business expenses, take a profit and comply with minimum wage, overtime, workers’ compensation premiums, unemployment compensation, Social Security deductions, and other basic standards. Often the contractor [labor broker] ekes out a profit and ignores its other financial obligations. The larger business benefits by keeping labor costs low at the expense of workers.”[[71]](#footnote-71)

The larger contracting companies that pay for labor through brokers will pay the broker significantly more, per hour, than the broker pays the actual worker. At times, the contracting company relies on this salary gap as it works out more cost effective for them in the end, with some research estimating that labor brokers can provide contractors with a savings of about 30 percent.[[72]](#footnote-72) For example, in New York City, workers employed through the labor brokering process report an hourly rate of around $15.[[73]](#footnote-73) This is despite the fact that the contracting company is paying the labor broker around $40 an hour for supplying the labor.[[74]](#footnote-74) For the contracting company, this is still a good and profitable deal because, had they used union workers, for example, they could be on the hook for close to $70 per hour, plus benefits.[[75]](#footnote-75)

Justice-affected New Yorkers working in body shops must therefore live on low wages, as the body shop system is predicated on charging contractors less money than companies employing union workers. According to Danny Coley and John Simmons, “When the best or only option for New Yorkers of color after incarceration is a low-wage job on a dangerous construction site, they are still imprisoned economically.”[[76]](#footnote-76) Numerous New Yorkers formerly employed in body shops testified at the Committee on Consumer Affairs and Business Licensing oversight hearing on “Employment agencies and other labor placement businesses” about the impact of these low wages. Tierra Williams, who performed construction work for the body shop Trade Off, testified that she was paid a poverty wage while employed there, requiring her to rely on public assistance benefits.[[77]](#footnote-77) Kareem Marcus testified that he was unable to survive working 40-hour work weeks at a body shop, so he started: “…working 7 days a week, 10 hour shifts, just to make a living. I couldn't even take my kids to the park in the summer time.”[[78]](#footnote-78) In addition to huge pay disparities, workers employed by labor brokers also report a lack of benefits, safety equipment and/or training, and poor working conditions.[[79]](#footnote-79) In New York City, for example, a number of cleaners employed by a company called LN Pro Services, who won a contract with the MTA, reported that they were not given adequate protective equipment when they were hired to clean the City’s subway cars throughout the COVID-19 pandemic.[[80]](#footnote-80) These workers, many of whom were immigrants or undocumented, also reported that they were given dirty cleaning supplies and paid under the promised $20 per hour amount.[[81]](#footnote-81)

In the City’s construction industry, stories abound about unsafe working conditions, lack of protective equipment, poor pay and little safety trainings for those employed through labor brokers.[[82]](#footnote-82) In 2017, a worker by the name of Juan Chonillo was killed when he fell from a construction site platform, after it had been unhooked, in contravention of the Building Code.[[83]](#footnote-83) The construction company overseeing this worksite has often used labor procured by labor broker Salvador Almonte, who has been indicted on insurance fraud, which he perpetrated to avoid paying workers’ compensation.[[84]](#footnote-84) According to the Manhattan District Attorney, more than a dozen of the workers employed by Almonte had been injured while at work; however, they had to wait months and even years to access their compensation, due to stall tactics used by Almonte.[[85]](#footnote-85) Female employees of labor brokers have raised awareness about the additional issue of sexual harassment. Labor broker Trade Off has been accused for years of poor labor practices and exploitation of its workers, who were mostly comprised of formerly incarcerated people.[[86]](#footnote-86) In July 2020, the company settled a sexual harassment suit with the New York Attorney General (AG) after the AG’s investigation substantiated claims of severe sexual harassment and retaliation against 18 women, a majority of whom were women of color.[[87]](#footnote-87) The complainants alleged “that supervisors offered to put extra hours on at least five women’s timesheets in exchange for sex; that at least one supervisor regularly tried to grope women, and at least two texted them photos of their penises.”[[88]](#footnote-88) Furthermore, the investigation found that leadership at Trade Off intervened to protect the accused, and retaliated against at least 12 women, who were fired after making complaints.[[89]](#footnote-89) Trade Off was one of the body shops who was contracted to supply labor to the development of Hudson Yards, the most expensive real estate development in the Country’s history.[[90]](#footnote-90) One of the women in this case who Trade Off fired, had experienced sexual harassment by a foreman at the Hudson Yards development.[[91]](#footnote-91)

1. **Lack of Accountability**

Although criminal and civil cases against unscrupulous labor brokers can be pursued, finding adequate restitution for exploited workers is still incredibly difficult. According to research by NELP, “[w]orkers frequently cannot even locate their contractors [labor brokers] to serve them with a summons for a lawsuit”.[[92]](#footnote-92) Furthermore, penalties can be paltry and such cases do little to deter or prevent exploitation.[[93]](#footnote-93) Even in jurisdictions where licensing and regulations exist, labor brokers have been known to dissolve and re-establish their business under a new operating name or under the name of a family member.[[94]](#footnote-94) Declaring bankruptcy is another way for labor brokers to avoid accountability or pay restitution.[[95]](#footnote-95)

Furthermore, the role of the multi-billion dollar contracting companies may perpetuate both the system of exploitation and the avoidance of accountability. According to NELP, the larger contracting company is typically aware of the poor pay and working conditions of the brokered workers, employed by the labor broker. Furthermore, this distance from the traditional employer/employee relationship may allow a contracting company “to avoid minimum wage, overtime, and other legal responsibilities applicable to ‘employers’, by characterizing the subcontractor [labor broker] as the sole employer.’”[[96]](#footnote-96)

1. **HOTELS IN NYC**

Before the COVID-19 pandemic, New York City was a mecca for tourists, and over the last ten years the number of visitors to the City had increased exponentially.[[97]](#footnote-97) For example, in 2018, there were 65 million tourists and in 2019, there were a record 67 million visitors.[[98]](#footnote-98) That’s more than eight times the City’s 2019 population.[[99]](#footnote-99) However, with domestic and global travel restrictions in place because of the COVID-19 pandemic, the City’s tourism industry has diminished substantially. According to data from the City’s tourism agency, New York and Company, hotel rates for the last week of August 2020 were down 72 percent compared to the seasonal rate in 2019.[[100]](#footnote-100) While tourism to the City has increased over the past year, the hotel occupancy rate for early August 2021 was still only 65 percent.[[101]](#footnote-101)

In 2017, the City’s Department of City Planning (DCP) published a report analyzing the trends in New York’s hotel industry. The report highlighted that over the previous ten years, the industry had grown by 42 percent in New York City, and that much of this growth had occurred in outer boroughs, mainly Brooklyn and Queens.[[102]](#footnote-102) At the time, New York’s hotel market was described as “very stable” and the City had the highest hotel occupancy rate in the country, during the first quarter of 2017.[[103]](#footnote-103) Unfortunately, a more recent analysis predicts that New York City will permanently lose 20 percent of its hotel rooms, due to the closure of hotels impacted by the COVID-19 pandemic.[[104]](#footnote-104)

At the end of 2019, and prior to the pandemic, New York City had 703 hotels operating approximately 138,000 rooms.[[105]](#footnote-105) The industry was valued at $45 billion and it employed an estimated 300,000 workers.[[106]](#footnote-106) With tourism steeply declining in the City, however, the negative effects have been felt acutely by the hotel industry, their workers, and the State as a whole. The City and State are expected to lose around $1.3 billion in tax revenues due to the downturn.[[107]](#footnote-107) The outlook for workers is similarly bleak. At the peak of the pandemic, during late March and April, nine in 10 hotels furloughed workers and nationally, 7.5 million industry jobs were lost.[[108]](#footnote-108)

According to the American Hotel and Lodging Association, hoteliers need an occupancy rate of about 50 percent if they have any likelihood of breaking even.[[109]](#footnote-109) While the data indicates modest improvements, the hotel industry remains in dire straits. If hoteliers are unable to stay afloat, there is serious concern that they will be forced into bankruptcy or sell. While this may help the individual hotelier, this puts hotel workers in a precarious state, with little to no guarantee regarding the security of their job, let alone their wages, benefits and working conditions. In New York City there are around 300,000 hotel workers, but around 60 percent are still unemployed after COVID-19 drastically reduced hotel revenues.[[110]](#footnote-110)

1. **NEWSSTANDS**

Newsstands have been ubiquitous in New York City since at least the 1950s, providing periodicals and sundries at approximately 1,500 locations around our City.[[111]](#footnote-111) It is estimated that there are closer to 300 newsstands in the City today,[[112]](#footnote-112) as consumer demand for newsstands[[113]](#footnote-113) and the laws governing them have changed. City newsstands were historically operated by independent owners, and the appearance of them varied considerably, with concerns about their structural safety and aesthetic value.[[114]](#footnote-114) In the mid-1990s, the City convened a Streetscape Task Force to recommend improvements to the City’s street environment, which led to amendments to newsstands’ regulatory structure. Local Law 29 of 1997 allowed for the Department of Transportation to offer a single franchise for the construction and maintenance of newsstands, which would eventually replace the old structures.[[115]](#footnote-115) Current operators were given the opportunity to become franchisees.[[116]](#footnote-116) While Local Law 29 was repealed, the current oversight structure for newsstands was established by a subsequent resolution[[117]](#footnote-117) and local law.[[118]](#footnote-118) The franchise contract was offered to Cemusa in 2005.[[119]](#footnote-119)

When Local Law 41 of 1998 repealed Local Law 29, it repealed the law’s allowance for corporations and partnerships to operate newsstands.[[120]](#footnote-120) That allowance has never been reinstated. Operating a newsstand requires obtaining a license, which must be renewed every two years for a fee of $1,076.[[121]](#footnote-121)

1. **BILL ANALYSIS**

**Int. 499**

This bill would expand the eligibility requirements for a newsstand license to allow partnerships, corporations and other business entities to obtain a license. It prohibits a person from operating a newsstand unless the person has no other income, exclusive of investment income, exceeding that which is earned from the newsstand. If the person is a corporation, partnership, limited liability company or other association, only one shareholder, partner, member or principal, respectively, would need to meet this requirement; provided that if that person is a child of persons authorized by the City to operate the newsstand, that child would have to be at least 18 years old and financially independent.

The bill maintains the limit of two licenses per entity, by repealing an existing section of the Administrative Code that contains the limitation and re-incorporating the limit into the bill. The bill contains provisions that allow DCWP to deem licenses to be held in the names of other individuals or entities related to the license holder for the purposes of enforcing the cap. Such individuals or entities would include: unemancipated children of the license holder; officers, directors, shareholders or partners of the same corporate entity; and other, corporate entities in which a member, manager or officer has a direct or indirect interest. These deeming provisions would help ensure that individuals do not use family members or corporate business structures to exceed the license limit.

This bill would take effect 120 days after it becomes law.

**Int. 508**

This bill would prohibit employers from requiring low-wage employees to enter into covenants not to compete as a condition of their employment. A “covenant not to compete” is defined in the bill as an agreement between an employer and employee that restricts the employee from working for an employer who is not a party to the agreement; from working in a certain geographical area for an employer who is not a party to the agreement; or from performing work for an employer who is not a party to the agreement that is similar to what was performed for the employer who is a party to the agreement. Low-wage workers would be those employees who are not manual workers, railroad workers, or sales people whose earnings are at least partly derived from commissions, as defined in the State Labor Law; except that workers employed in an executive, administrative or professional role would not be considered a low-wage worker unless that worker made $900 per week or less.

The bill prohibits employers from entering into covenants not to compete with their low-wage employees. Employers of workers who are not low-wage workers may require the employee to enter into a covenant not to compete only if that employer discloses the requirement in writing to the employee at the beginning of the hiring process.

This bill would be enforced by DCWP’s Office of Labor Policy & Standards. It would take effect 120 days after becoming law, however the Office of Labor Policy & Standards would be empowered to promulgate rules and take any other actions necessary for the law’s implementation before it takes effect.

**Int. 974**

This bill would require that employers, in any print or electronic, public solicitation requesting job applicants for paid work, disclose the fact that the person hired for such position would be required to sign a contract with mandatory arbitration or non-disparagement clauses. Mandatory arbitration clauses are defined in the bill as those that require the settlement of disputes through arbitration, while non-disparagement clauses are those that restrict the contract’s signatory from speaking in ways that would damage another person’s reputation. Employers who fail to make such a disclosure would be subject to civil penalties of $500-1000 for each position for which a disclosure was not made. DCWP would be charged with enforcing this bill.

Int. 974 would take effect 120 days after becoming law, except that DCWP may promulgate rules that are necessary for the implementation for the law before such date.

**Int. 2318**

This bill would require businesses who temporarily supply their employees to clients for the performance of manual labor, such as construction work, to be licensed for a fee of $200. The license term would expire every two years, and businesses that apply for a license would have to provide proof of insurance and workers compensation. The businesses would also be required to attest that their businesses are in compliance with laws, rules and regulations that apply to them as labor service providers, and that there are no outstanding final judgements or warrants issued against them for violations of regulations related to this licensing scheme. Such businesses would be required to provide their employees with a summary of their rights under city, state and federal employment laws and with information on their next work assignment at least 24 hours prior to beginning work. The businesses would additionally be required to disclose data on their company, workforce, worksites, and workers’ compensation and unemployment insurance information to DCWP twice per year. That information would be supplied to the Council and the Mayor yearly, and published on the Department’s website. The bill would also make it unlawful for clients of these businesses to contract with businesses that are unlicensed. Employees who avail themselves of their rights under this bill would be protected against retaliation. Violations by businesses supplying temporary labor of any rules related to the licensing scheme could result in license suspension and revocation, civil penalties and other enforcement actions ordered by a court. Employees of these businesses would be able to initiate a private right of action against their employers for violations of the law.

This bill would take effect 120 days after becoming law, except that DCWP may take such measures as are necessary for implementation of the law, including the promulgation of rules, before such date.

**Int. 2397**

The bill would require severance pay for hotel service employees in the event of a closure or a mass layoff. A “closure” would consist of the closure of a hotel to the public on or after March 1, 2020, and where the hotel has not reopened and recalled 25 percent of its workforce by October 1, 2021. For a closure, a hotel would be required provide severance pay in the following amounts: (i) from September 6, 2021 to December 19, 2021, $500 per week; and (ii) from December 20, 2021 to April 3, 2022, $1,000 per week.

A “mass layoff” would mean a (i) reduction in workforce, which is not the result of a closure and that results in a layoff during any 30-day period for 75 percent or more of the employees at the establishment; (ii) the failure to reopen a hotel for transient use to the public; or (iii) maintaining an average offered occupancy rate of less than 50 percent. For a mass layoff, severance pay would be: (i) from October 4, 2021 to January 16, 2022, $500 per week; and (ii) from January 17, 2022 to May 2, 2022, $1,000 per week. Such pay would not be provided for more than 30 weeks.

The severance pay required by this bill would not apply to employees who are recalled or who are covered by a collective bargaining agreement that provides a greater level of severance pay, or to a hotel that has closed permanently and has or is in the process of converting to an alternate use, provided that employees are offered severance of at least 20 days-pay per year of service and provided that the severance is specifically tied to the conversion. If a hotel reopens, the obligation to provide severance pay would cease on the date the employee is recalled, or four weeks from the date on which the hotel reopened, whichever is sooner. An eligible hotel employee who has not received the severance pay required by this bill may pursue an action in state court against a hotel employer, for which a court may award that employee twice the amount of severance pay owed, in addition to the employee’s reasonable attorney’s fees and costs.

This bill would take effect immediately.

Int. No. 499

By Council Member Koslowitz

..Title

A Local Law to amend the administrative code of the city of New York, in relation to allowing corporations, partnerships and other business entities to obtain newsstand licenses

..Body

Be it enacted by the Council as follows:

Section 1. Section 20-228 of the administrative code of the city of New York is amended by adding two new subdivisions g and h, to read as follows:

g. Emancipated child.  Any daughter, son, step-daughter or step-son who is at least eighteen years of age and who is financially independent.

h. Unemancipated child.  Any daughter, son, step-daughter or step-son who is under the age of eighteen, unmarried and living in the same household.

§ 2. Section 20-229 of the administrative code of the city of New York, as amended by local law 64 for the year 2003, is amended to read as follows:

§ 20-229 License required. a. No person shall [maintain or] operate a newsstand or newsstands unless licensed pursuant to this subchapter, and unless [the operation of the newsstand is his or her principal employment]such person has no other income, excluding investment income, which exceeds the income such person earns from the operation of the newsstand or newsstands; provided, however, that if such person is a corporation, partnership, limited liability company or other association, only one shareholder of such corporation, one partner of such partnership, one member of such limited liability company or one principal of such other association, respectively, must have no other income, excluding investment income, which exceeds the income such person earns from the operation of the newsstand or newsstands; and provided further, that if such shareholder, partner, member or principal is the child of the persons authorized to operate a newsstand, such child must be an emancipated child. No license shall be issued to [an individual]a person for the operation of a newsstand that is not a replacement newsstand and that has been constructed and installed by a franchisee pursuant to a franchise unless such operator has reimbursed such franchisee for the costs of construction and installation of such newsstand as determined by the department in accordance with paragraph two of subdivision c of section [20-241.1]20-241 of the code.

b. 1. No person shall be issued more than two licenses to operate a newsstand pursuant to this subchapter.

2. For purposes of determining the number of licenses held by a person pursuant to paragraph 1 of this subdivision, the following provisions shall apply:

(a) A natural person shall be deemed to hold the license issued in the name of such natural person's unemancipated child, a partnership in which such natural person is a partner, a corporation in which such natural person is an officer, director or shareholder, or a limited liability company in which such natural person is a member, manager or officer.

(b) A corporation shall be deemed to hold the license issued in the name of:

(1) An officer, director or shareholder of such corporation;

(2) Another corporation where such corporation and such other corporation share a common officer, director or shareholder, or such corporation or any of its officers, directors or shareholders has any direct or indirect interest in such other corporation;

(3) A limited liability company where such corporation or any of its officers, directors or shareholders is a member, manager or officer of such limited liability company, or such corporation or any of its officers, directors or shareholders has any direct or indirect interest in such limited liability company; or

(4) A partnership where such corporation or any of its officers, directors or shareholders is a partner in such partnership, or such corporation or any of its officers, directors or shareholders has any direct or indirect interest in such partnership.

(c) A limited liability company shall be deemed to hold the license issued in the name of;

(1) A member, manager or officer of such limited liability company;

(2) Another limited liability company where such limited liability company and such other limited liability company share a common member, manager or officer, or such limited liability company or any of its members, managers or officers has any direct or indirect interest in such other limited liability company;

(3) A corporation where such limited liability company or any of its members, managers or officers is an officer, director or shareholder in such corporation or such limited liability company or any of its members, managers or officers has any direct or indirect interest in such corporation; or

(4) A partnership where such limited liability company or any of its members, managers or officers is a partner in such partnership, or such limited liability company or any of its members, managers or officers has any direct or indirect interest in such partnership.

(d) A partnership shall be deemed to hold the license in the name of:

(1) A partner of such partnership;

(2) Another partnership where such partnership is a partner in such other partnership, such partnership and such other partnership share a common partner, or such partnership or any of its partners has any direct or indirect interest in such other partnership;

(3) A corporation where such partnership or any of its partners is an officer, director or shareholder in such corporation, or such partnership or any of its partners has any direct or indirect interest in such corporation; or

(4) A limited liability company where such partnership or any of its partners is a member, manager or officer in such limited liability company, or such partnership or any of its partners has any direct or indirect interest in such limited liability company.

§ 3. Section 20-241 of the administrative code of the city of New York is REPEALED.

§ 4.Section 20-241.1 of the administrative code of the city of New York is renumbered section 20-241.

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

BAM

LS 10525/Int. 1774-2017

LS 317

5/3/17

Int. No. 508

By Council Members Rosenthal, Menchaca, Kallos, Cornegy and Ayala

..Title

A Local Law to amend the administrative code of the city of New York, in relation to the prohibition of requiring low-wage workers to enter into covenants not to compete and also to require employers to notify potential employees of any requirement to enter into a covenant not to compete

..Body

Be it enacted by the Council as follows:

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

§ 22-510 Prohibition of covenants not to compete for low-wage employees.

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 that is entered into after the effective date of the local law that added this section between an employee and an employer that restricts such employee from performing 1) work for an employer not a party to such agreement for a specified period of time; 2) work in a specified geographical area for an employer not a party to such agreement; or 3) work for an employer not a party to such agreement that is similar to such employee’s work for the employer who is a party to the agreement.

Employee. The term “employee” means an employee as defined in subdivision 2 of section 190 of the labor law.

Employer. The term “employer” means an employer as defined in subdivision 3 of section 190 of the labor law.

Low-wage employee. The term “low-wage employee” means a clerical and other worker as defined in subdivision 7 of section 190 of the labor law.

b. Prohibition. No employer shall enter into a covenant not to compete with any low-wage employee of such employer.

c. Disclosure requirement for non-low-wage workers. An employer may not require a potential employee who is not a low-wage employee to enter into a covenant not to compete unless, at the beginning of the process for hiring such employee, such employer disclosed in writing that they may be subject to such a covenant.

d. Enforcement. The office of labor standards shall enforce the requirements of this section.

§ 2. This local law takes effect 120 days after it becomes law; provided, however, that the office of labor standards shall take all actions necessary for its implementation, including the promulgation of rules, before such date.

JR (2016)/MMB (2017)

LS #6288/Int 1663-2017

NEW LS # 157

12/1/17 12:08 p.m.

Int. No. 974

By Council Members Rosenthal, Miller, Rivera, Cornegy and Ayala

..Title

A Local Law to amend the administrative code of the city of New York, in relation to the disclosure in employment advertisements of mandatory arbitration and non-disparagement clauses in employment contracts

..Body

Be it enacted by the Council as follows:

Section 1. Chapter 5 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 20 to read as follows:

SUBCHAPTER 20

EMPLOYMENT ADVERTISEMENTS

§ 20-830 Employment advertisements. a. Definitions. As used in this subchapter, the following terms have the following meanings:

Employment advertisement. The term “employment advertisement” means any public solicitation, in print or electronic format, for applications for paid work in the city of New York.

Mandatory arbitration clause. The term “mandatory arbitration clause” means a contract clause that requires the settlement of some or all disputes through arbitration.

Non-disparagement clause. The term “non-disparagement clause” means a contract clause that restricts signatories from speaking in ways that damage a person’s reputation.

b. Disclosure of mandatory arbitration clauses and non-disparagement clauses. Persons in the city of New York shall, in employment advertisements for which the employment will be subject to a contract that includes a mandatory arbitration clause or non-disparagement clause, clearly and plainly disclose in such advertisement that the employment will be subject to a contract with such a clause or clauses.

c. Civil penalties. Any person who violates any provision of this section or any rule promulgated pursuant thereto is liable for a civil penalty of not less than $500 or more than $1,000 for each violation. For purposes of this section, each position for which an employment advertisement is published in violation of this section shall constitute a separate violation. A proceeding to recover any civil penalty authorized pursuant to this chapter is returnable to any tribunal established within the office of administrative trials and hearings or within any agency of the city designated to conduct such proceedings.

d. Enforcement. The department is authorized to enforce the provisions of this section.

§ 2. This local law takes effect 120 days after it becomes law; provided, however, that the department of consumer affairs may promulgate rules as may be necessary for the implementation of this local law prior to such effective date.

JJD

LS 4658 & 4685

4/6/18

Int. No. 2318

By Council Members Ayala, Brannan, Moya, Chin, Gibson, Kallos, Rosenthal, Salamanca, Miller, Lander, Menchaca, Rivera, Powers, Riley, Dinowitz, Levine, Koslowitz, Reynoso, Adams, Holden, Levin, Feliz, Cumbo, Louis, Ampry-Samuel, Cornegy and Brooks-Powers

..Title

A Local Law to amend the administrative code of the city of New York, in relation to the licensing of labor service providers

..Body

Be it enacted by the Council as follows:

Section 1. Chapter 2 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 36 to read as follows:

SUBCHAPTER 36

LABOR SERVICE PROVIDERS

§ 20-563 Definitions. For purposes of this subchapter, the following terms have the following meanings:

Covered worker. The term “covered worker” means a “manual worker,” as defined in article 190 of the labor law and the rules and regulations adopted thereunder, who is employed by a labor service provider.

Labor service provider. The term "labor service provider" means a person that engages in the business of employing and supplying covered workers to third party clients for the performance of manual labor on projects of such third party clients, the completion of which is directed by such third party client or such third party client’s contractor and not such person, in exchange for compensation from such third party client. The term “labor service provider” does not mean:

1. An employment agency or an employee fee paid employment agency, as defined by article 11 of the general business law;

2. A professional employer organization, as defined by article 31 of the labor law;

3. A construction subcontractor, as evidenced by meeting all of the following criteria: (i) an obligation to perform construction work on a project in accordance with a written contract for a defined scope of construction work at a fixed price; (ii) the obtaining of necessary licenses to perform construction services under the entity’s name; (iii) exclusive control of the subcontractor’s workers, including hiring and firing authority and direction of methods and means of construction work performed on the construction project; (iv) the payment of wages and fringe benefits to workers by the subcontractor and not any other person or entity, and maintenance of required employment and payroll records by the subcontractor; (v) the purchase of the majority of materials, supplies and tools for construction work performed by the subcontractor on the project; and (vi) the maintenance of separate workers’ compensation and unemployment insurance coverage by the subcontractor for periods preceding, during and succeeding the term of the construction project for the type and scope of construction work performed by the subcontractor on the project. The commissioner may promulgate rules requiring additional documentation to establish that an applicant is a construction subcontractor; or

4. A general contractor, as defined in section 28-401.3.

Manual labor. The term “manual labor” means the type of physical work the performance of which classifies a natural person as a “manual worker” in accordance with section 190 of the labor law and the rules and regulations adopted thereunder.

Successor. The term “successor” means a labor service provider that does or has done two or more of the following:

a. Uses the same facility, facilities or workforce to offer substantially the same services as a predecessor labor service provider;

b. Shared in the ownership, or otherwise exercised control over, the management of a predecessor labor service provider;

c. Employs in a managerial capacity any person who controlled the wages, hours, or working conditions of the affected employees of a predecessor labor service provider; or

d. Is an immediate family member, including a parent, step-parent, child, or step, foster or adopted child, of any owner, partner, officer, or director of a predecessor labor service provider, or of any person who had a financial interest in the predecessor labor service provider.

Third party client. The term “third party client" means any person who contracts with a labor service provider to obtain the services of a covered worker.

Unemployment insurance experience rating. The term “unemployment insurance experience rating” means unemployment insurance contribution rates for employers determined based upon the employer’s prior employment and unemployment experience, in accordance with state law.

Work opportunity tax credit. The term “work opportunity tax credit” means the credit against tax set forth in sections 51 and 52 of title 26 of the United States code.

Workers’ compensation experience modification rate. The term “workers’ compensation experience modification rate” means a metric by which insurance companies calculate an employer’s workers’ compensation premiums, which is based at least in part on such employer’s past workers’ compensation claims and workers’ compensation costs.

§ 20-563.1 License. a. It shall be unlawful for any person to engage in business as a labor service provider without first having obtained a license from the department pursuant to this subchapter.

b. There shall be a fee of $200 to apply for or renew a license issued under this subchapter.

c. In addition to an applicant's name, address, corporate structure and ownership, and other information as the commissioner may require, an applicant for a license required by this section shall furnish the following information:

1. A signed statement certifying compliance with all laws, regulations and rules applicable to doing business as a labor service provider;

2. A signed certification by the applicant that there are no outstanding final judgments or warrants against the applicant in any action arising out of a violation of this subchapter or any rules promulgated thereunder;

3. Certificates of insurance for workers' compensation, unemployment insurance and disability insurance coverage;

4. Original or true copies of liability insurance policies or certificates of insurance for liability insurance carried by the applicant; and

5. If required by the commissioner, written proof of compliance with any bond requirement.

d. In addition to any of the powers that may be exercised by the commissioner pursuant to this subchapter or chapter one of this title or any rules promulgated thereunder, the commissioner may deny issuance or renewal of a license upon a finding that:

1. The applicant has failed to satisfy any fine or civil penalty ordered against such applicant in a judicial or administrative proceeding arising out of a violation of this subchapter or any rules promulgated thereunder;

2. An entity to which the applicant is a successor has failed to satisfy any fine or civil penalty ordered against such entity in a judicial or administrative proceeding arising out of a violation of this subchapter or any rules promulgated thereunder; or

3. The applicant lacks good moral character. In making such determination, the commissioner may consider, but is not limited to, any of the following factors:

(a) Failure by such applicant to provide truthful information or documentation in connection with the application or other request for information;

(b) Final determinations of liability in a civil, criminal or administrative action involving egregious or repeated nonpayment or underpayment of wages or other illegal acts or omissions bearing a direct relationship to the fitness of the applicant to conduct the business for which the license is sought; except that the commissioner shall take into account mitigating factors including: (1) the passage of time since such findings of liability or other illegal acts or omissions at issue; (2) the severity of such findings of liability or other illegal acts or omissions; (3) whether any such findings or other illegal acts or omissions were resolved or are still pending; and (4) any change in circumstance that might reduce the likelihood of such findings or other illegal acts or omissions recurring during the period of licensure, including the fact that such findings or other illegal acts or omissions at issue took place prior to the effective date of this subchapter;

(c) Prior revocation by the commissioner of a labor service provider license held by the applicant or licensee; or

(d) A finding that within the last ten years an entity to which the applicant is a successor has been denied the issuance or renewal of a license pursuant to this subdivision or has had a license revoked pursuant to section 20-563.7 of this subchapter.

§ 20-563.2 Employee notices. a. Statement of rights and obligations. Every labor service provider shall provide to each applicant for employment as a covered worker, before commencing employment, a written statement indicating the rights of covered workers and the obligations of labor service providers under city, state and federal law. Such statement of rights and obligations shall summarize in plain language provisions of city, state and federal laws that pertain to covered workers in their capacity generally as workers and specifically as covered workers. Such statement of rights and obligations shall include, but not be limited to, laws regarding minimum wage, overtime and hours of work, sick time, safety training requirements, record keeping, social security payments, unemployment insurance coverage, disability insurance coverage, workers' compensation, and any protections afforded by this subchapter. Such statement of rights and obligations shall be prepared and made available to labor service providers by the commissioner.

b. Notice of assignment. 1. At least 24 hours prior to dispatching a covered worker to a worksite for a third party client, a labor service provider shall provide the covered worker with a notice containing the following information in a form and manner approved by the commissioner:

(a) The name and business address of the third party client and any other entity responsible for supervising such covered worker’s work during the assignment;

(b) The address of the worksite;

(c) The nature of the work to be performed and the types of equipment, protective clothing, and training required for the tasks;

(d) The anticipated number of hours of work, per week, or if less than a week, by day;

(e) The anticipated duration of the assignment;

(f) The wages offered, including whether prevailing wages would be owed for work performed, and whether supplemental benefits, including but not limited to health insurance, retirement funds and insurance premiums, would be paid for by the labor service provider, the third party client or another entity;

(g) The name of the party responsible for providing workers’ compensation coverage for such covered worker and the insurance policy number covering such covered worker; and

(h) Whether a meal or equipment, or both, are provided, either by the labor service provider or the third party client, and the cost to the covered worker of the meal and equipment, if any.

2. If a covered worker is tasked with the same assignment for more than one day, the labor service provider shall provide the notice required in this subdivision only on the first day of the assignment and on any day that any of the terms listed on such notice have changed.

c. Every labor service provider shall provide to the third party client on each project for which covered workers have been contracted to work, and the owner of the property where work is being performed, as applicable, a copy of the information required by this section, and shall additionally furnish such information upon such third party client’s request at any time for the duration of the project. The third party client shall provide written acknowledgment of receipt of such information.

§ 20-563.3 Semi-annual disclosure. a. On or before January 31 and July 31 each year, each labor service provider shall submit a disclosure to the commissioner regarding the covered workers it employed during the preceding six calendar months, which shall be the reporting period. Such disclosure shall, in a form prescribed by the commissioner, provide the following information:

1. The total number of covered workers employed;

2. The race, ethnicity and gender of each covered worker;

3. The length of employment for each covered worker, in work days, as of the last day of the reporting period;

4. The hourly rate of wage and hourly value of any supplemental benefits paid to each covered worker, with information on any increases to wages paid for each covered worker;

5. Types of supplemental benefits paid to each covered worker;

6. Classifications of work for each covered worker, as reported to such labor service provider’s workers’ compensation insurance carrier;

7. The name of each third party client for whom each such covered worker provided labor;

8. The address of each site where each such covered worker worked;

9. The names of each principal and officer of such labor service provider;

10. Any pending civil or criminal investigations of such labor service provider by any government entity;

11. Any pending litigation matters against the labor service provider involving alleged violations of articles 6 or 9 of the labor law, the fair labor standards act of 1938, or any local, state or federal anti-discrimination or harassment laws, rules, or regulations;

12. The total value of any work opportunity tax credits received by such labor service provider;

13. The value of any work opportunity tax credits claimed by such labor service provider;

14. Such labor service provider’s workers’ compensation experience modification rate as of the last day of the reporting period;

15. Such labor service provider’s unemployment insurance experience rating as of the last day of the reporting period;

16. The number of workers’ compensation claims filed against such labor service provider during the reporting period; and

17. Any local, state, or federal wage laws, including but not limited to article 8 or 9 of the labor law and section 421-a of the real property tax law, applicable to such covered workers during the reporting period.

b. On or before February 28 each year, the commissioner shall submit to the mayor and the speaker of the council, and shall publish on the department’s website, a report containing the information received for the previous calendar year in accordance with subdivision a of this section. For publication on the department’s website, the commissioner shall anonymize any data that could be used to identify individual covered workers.

§ 20-563.4 Records. Every labor service provider shall keep on file in its principal place of business for a period of three years the following records:

a. Statements signed by each covered worker, indicating that the covered worker received, read and understood the notices required to be provided to them pursuant to section 20-563.2 of this subchapter; and

b. All documents necessary to verify the information reported in section 20-563.3 of this subchapter.

All such documents shall be made available for inspection during normal business hours to the commissioner or the commissioner’s duly authorized representatives.

§ 20-563.5 Third party clients. It is unlawful for a third party client to enter into a contract with any labor service provider not licensed under this subchapter. A third party client shall have a duty to verify a labor service provider's status with the department before entering into a contract with such a service, and on March 1 and September 1 of each year. A labor service provider shall provide each of its third party clients with a copy of their license issued by the department at the time of entering into a contract. A labor service provider shall be required to notify, both by telephone and in writing, each covered worker it employs and each third party client with whom it has a contract within 24 hours of any denial, suspension, or revocation of its license by the department. All contracts between any labor service provider and any third party client shall be considered null and void from the date any such denial, suspension, or revocation of such employer’s license becomes effective and until such time as the labor service provider becomes licensed and considered in good standing by the department as provided in section 20-563.1 of this subchapter. A third party client may rely on information provided by the department, and shall be held harmless if such information maintained or provided by the department was inaccurate. Any third party client that violates this section shall be subject to a civil penalty not to exceed $500. Each day during which a third party client contracts with a labor service provider agency not licensed pursuant to this subchapter shall constitute a separate and distinct offense.

§ 20-563.6 Unlawful retaliation. It shall be unlawful for any labor service provider to take or threaten to take an adverse employment action against any person, or directly or indirectly intimidate, threaten, coerce, command or influence or attempt to intimidate, threaten, coerce, command or influence any person because such person has taken an action to enforce, inquire about or inform others about the requirements of this subchapter.

§ 20-563.7 Enforcement. a. In addition to any of the powers that may be exercised by the commissioner pursuant to this subchapter or chapter one of this title or any rules promulgated thereunder, the commissioner, after due notice and an opportunity to be heard, may suspend or revoke a license issued pursuant to this subchapter upon the occurrence of any one or more of the following conditions:

1. Fraud, misrepresentation or false statements contained in the application for the license or in any information required to be provided in accordance with this subchapter;

2. A final determination of liability concerning a violation of any of the provisions of this subchapter;

3. A final determination of liability in a civil, criminal or administrative action involving egregious or repeated nonpayment or underpayment of wages or other illegal acts or omissions bearing a direct relationship to the fitness of the applicant to conduct the business for which the license is sought; except that the commissioner shall take into account mitigating factors including: (a) the passage of time since such findings of liability or other illegal acts or omissions at issue, (b) the severity of such findings of liability or other illegal acts or omissions, (c) whether any such findings or other illegal acts or omissions were resolved or are still pending, and (d) any change in circumstance that might reduce the likelihood of such findings or other illegal acts or omissions recurring during the period of licensure, including the fact that such findings or other illegal acts or omissions at issue took place prior to the effective date of this subchapter;

4. Failure to answer a summons, notice of violation or subpoena, appear for a hearing, or satisfy a fine or civil penalty ordered against such entity in a judicial or administrative proceeding arising out of a violation of this subchapter or any rules promulgated thereunder; or

5. Failure to submit the records described in section 20-563.4 for inspection by the department.

b. Any person operating as a labor service provider without a valid license issued by the commissioner shall be liable for a civil penalty of $200 per day for every calendar day during which the unlicensed labor service provider operated.

c. Any person who violates any of the provisions of this subchapter shall be liable for a civil penalty of not more than $2,000, unless otherwise specified in this subchapter, in addition to any other civil or criminal penalties that may be applicable under this code or any other law, rule or regulation.

d. A labor service provider shall notify every covered worker and every third party client with whom it has a contract of all final violations or penalties issued against such labor service provider by the commissioner pursuant to this subchapter, within 90 days of such issuance.

e. Any action or proceeding that may be appropriate or necessary for the correction of any violation issued pursuant to this subchapter, including, but not limited to, actions to secure permanent injunctions, enjoining any acts or practices which constitute such violation, mandating compliance with the provisions of this subchapter or such other relief as may be appropriate, may be initiated in any court of competent jurisdiction by the corporation counsel or such other persons designated by the corporation counsel on behalf of the commissioner.

§ 20-563.8 Private right of action. A person who is aggrieved by a violation of this subchapter may commence an action in a court of competent jurisdiction on his or her own behalf against a labor service provider. For each negligent violation of section 20-563.2, the prevailing party may recover damages of $500. For each intentional or reckless violation of section 20-563.2, the prevailing party may recover damages of $1,000. A person who is a victim of retaliation in violation of section 20-563.6 shall be entitled to all relief necessary to make such person whole, including, but not limited to: (i) an injunction to restrain any adverse or retaliatory action; (ii) reinstatement to the position such officer or employee would have had but for such action, or to an equivalent position; and (iii) reinstatement of full benefits and seniority rights including payment of any missed back pay, plus interest. Persons aggrieved by violations of either section 20-563.2 or section 20-563.6 shall be entitled to compensation for any special damages sustained as a result of an action commenced pursuant to this section, including litigation costs and reasonable attorneys' fees; and to relief other than set forth in this section as the court may deem appropriate.

§ 2. This local law takes effect 120 days after it becomes law, except that the commissioner shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

SJ

LS #17096

4/30/21

Int. No. 2397

By Council Members Moya and Kallos

..Title

A Local Law in relation to severance pay for hotel service employees

..Body

Be it enacted by the Council as follows:

Section 1. Definitions. For the purposes of this local law, the following terms have the following meanings:

Closure. The term “closure” means the closure of a hotel to the public commencing on or after March 1, 2020 and where such hotel has not reopened and recalled 25 percent of its workforce by October 1, 2021.

Covered hotel service employee. The term “covered hotel service employee” means, with respect to a hotel, a person who, as of March 1, 2020, had been employed for one year or more to perform work in connection with the operation of such hotel and who was not during such time a managerial, supervisory, or confidential employee or otherwise exercising control over the management of such hotel, and has a legal right to be recalled to their previous position.

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

Hotel employer. The term “hotel employer” means any person who owns, controls or operates a hotel.

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

Mass layoff. The term "mass layoff" means (i) a reduction in force which is not the result of a closure and which results in a layoff during any 30-day period for 75 percent or more of the employees at the establishment; (ii) the failure to reopen a hotel for transient use to the public; or (iii) maintaining an average offered occupancy rate of less than 50 percent.

Offered occupancy rate. The term “offered occupancy rate” means, with respect to a hotel for a particular night, the number of rooms in such hotel available and offered for occupancy for such night divided by the total number of rooms in such hotel.

§ 2. Severance. a. Whenever there is a hotel closure, a hotel employer shall provide to each covered hotel service employee, severance pay for such week in the following amount, provided that no such employee need be provided such pay for more than 30 weeks:

(i) for the weeks commencing September 6, 2021, but before December 19, 2021, $500; and

(ii) for the weeks commencing December 20, 2021, but before April 3, 2022, $1,000.

b. Whenever there is a mass layoff, a hotel employer shall provide to each covered hotel service employee, severance pay for such week in the following amount, provided that no such employee need be provided such pay for more than 30 weeks:

(i) for the weeks commencing October 4, 2021, but before January 16, 2022, $500; and

(ii) for the weeks commencing January 17, 2022, but before May 2, 2022, $1,000.

c. Such severance pay shall be provided to such employee within five days after the end of such week.

d. The payment of severance pay pursuant to subdivision a shall not affect an employee’s legal right to be recalled to their previous position.

e. The payment of severance pay pursuant to subdivision a shall be in addition to any severance or similar pay already paid or otherwise owed for periods prior to October 1, 2021.

§ 3. Applicability. a. This section shall not apply to:

(i) a covered hotel service employee who is recalled full-time;

(ii) a covered hotel service employee who is covered by a collective bargaining agreement that provides for a greater level of severance pay for a given week; or

(iii) a hotel that has closed permanently and has or is in the process of converting to an alternate use, provided that covered hotel service employees are offered severance in an amount of not less than 20 days pay per year of service at the same rate that such employee is paid for paid days off and provided that such severance was specifically tied to the conversion of the hotel.

b. If a hotel reopens, its obligations to pay the severance for a covered hotel service employee shall cease on the sooner of the date such employee is recalled, or four weeks from the date on which such hotel reopens.

§ 4. Remedies. a. A hotel service employee for a hotel who has not received severance pay owed pursuant to this local law may bring an action in supreme court against a hotel employer for violation of this local law.

b. If the court finds that such employee has not received severance pay in violation of this local law, the court shall award to such employee twice the amount of severance pay owed pursuant to this local law and such employee's reasonable attorney's fees and costs.

c. For violations of this local law, the commissioner of consumer and worker protection may issue an order directing compliance.

§ 5. This local law takes effect immediately.

9/2/21 5:05PM

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