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Title: A Local Law to amend the administrative code of the city of New York, in relation to holding franchisors liable for human rights violations committed by franchisees

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Attachments: 1. Summary of Int. No. 1725, 2. Int. No. 1725, 3. September 25, 2019 - Stated Meeting Agenda with Links to Files, 4. Hearing Transcript - Stated Meeting 9-25-19, 5. Minutes of the Stated Meeting - September 25, 2019

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Int. No. 1725

By Council Members Lander, Powers and Reynoso

A Local Law to amend the administrative code of the city of New York, in relation to holding franchisors liable for human rights violations committed by franchisees

Be it enacted by the Council as follows:

Section 1. Paragraph d of subdivision 13 of section 8-107 of the administrative code of the city of New York, as amended by local law 63 for the year 2018, is amended to read as follows:

d. Where liability of an employer, except an employer acting in the capacity as a parent entity or franchisor, has been established pursuant to this section and is based solely on the conduct of an employee, agent, or independent contractor, the employer shall be permitted to plead and prove to the discriminatory conduct for which it was found liable it had:

(1) Established and complied with policies, programs and procedures for the prevention and detection of unlawful discriminatory practices by employees, agents and persons employed as independent contractors,

including but not limited to:

(i) A meaningful and responsive procedure for investigating complaints of discriminatory practices by employees, agents and persons employed as independent contractors and for taking appropriate action against those persons who are found to have engaged in such practices;

(ii) A firm policy against such practices which is effectively communicated to employees, agents and persons employed as independent contractors;

(iii) A program to educate employees and agents about unlawful discriminatory practices under local, state, and federal law; and

(iv) Procedures for the supervision of employees and agents and for the oversight of persons employed as independent contractors specifically directed at the prevention and detection of such practices; and

(2) A record of no, or relatively few, prior incidents of discriminatory conduct by such employee, agent or person employed as an independent contractor or other employees, agents or persons employed as independent contractors.

e. Where liability of a parent entity or franchisor has been established pursuant to this section and is based solely on the conduct of the owner, franchisee, employee, agent, or independent contractor of a subsidiary entity or franchise, the parent entity or franchisor shall be permitted to plead and prove to the discriminatory conduct for which it was found liable it had:

(1) Established and provided the subsidiary entity or franchise with policies and procedures for the prevention and detection of unlawful discriminatory practices by employees, agents and persons employed as independent contractors, including but not limited to:

(i) A meaningful and responsive procedure for investigating complaints of discriminatory practices by employees, agents and persons employed as independent contractors and for taking appropriate action against those persons who are found to have engaged in such practices, including procedures for reporting complaints anonymously, maintaining confidentiality of the complaint whenever possible, and procedures for promptly and

thoroughly investigating the complaint and protecting the complainant from retaliation;

(ii) A firm policy against such practices which is effectively communicated to employees, agents and persons employed as independent contractors;

(iii) Curriculum materials to educate managers, employees and agents about unlawful discriminatory practices under local, state, and federal law;

(iv) Procedures for the supervision of employees and agents and for the oversight of persons employed as independent contractors specifically directed at the prevention and detection of such practices; and

(v) Notice in employee manuals that clearly communicates the rights of employees, agents, and persons employed as independent contractors under this section, including contact information for submitting complaints of discriminatory conduct directly to the parent entity or franchisor.

(2) Established and provided training to all franchisees or owners of subsidiary entities on the prevention and detection of unlawful discriminatory practices under local, state, and federal law;

(3) Established and complied with a meaningful and responsive procedure to receive and investigate complaints of discriminatory practices by franchisees or owners of its subsidiary entities, and for taking appropriate action against the person or persons who are found to have engaged in such practices, including procedures for reporting complaints anonymously, maintaining confidentiality of the complaint whenever possible, and procedures for promptly and thoroughly investigating the complaint and protecting the complainant from retaliation;

(4) Established and complied with a meaningful and responsive procedure to receive and investigate complaints of discriminatory practices by an employee, agent or person employed as an independent contractor at a franchise or subsidiary entity when the franchisee or owner of the subsidiary entity failed to follow a meaningful and responsive procedure to receive and investigate the complaint, and for taking appropriate action against the person or persons who are found to have engaged in such practices, including procedures for reporting complaints anonymously, maintaining confidentiality of the complaint whenever possible, and

procedures for promptly and thoroughly investigating the complaint and protecting the complainant from retaliation; and

(5) A record of no, or relatively few, prior incidents of discriminatory conduct within such franchise or subsidiary entity of which the franchisor or parent entity knew or should have known.

[e.] f. The demonstration of any or all of the factors listed above in addition to any other relevant factors shall be considered in mitigation of the amount of civil penalties to be imposed by the commission pursuant to this chapter or in mitigation of civil penalties or punitive damages which may be imposed pursuant to chapter 4 or 5 of this title and shall be among the factors considered in determining an employer's liability under subparagraph 3 of paragraph b of this subdivision;

[f.] g. The commission may establish by rule policies, programs and procedures which may be implemented by employers for the prevention and detection of unlawful discriminatory practices by employees, agents and persons employed as independent contractors. Notwithstanding any other provision of law to the contrary, an employer found to be liable for an unlawful discriminatory practice based solely on the conduct of an employee, agent or person employed as an independent contractor who pleads and proves that such policies, programs and procedures had been implemented and complied with at the time of the unlawful conduct shall not be liable for any civil penalties which may be imposed pursuant to this chapter or any civil penalties or punitive damages which may be imposed pursuant to chapter 4 or 5 of this title for such unlawful discriminatory practices.

§ 2. Subdivision 23 of section 8-107 of the administrative code of the city of New York, as added by local law number 9 for the year 2014, is amended to read as follows:

23. Additional provisions relating to employment. a. The provisions of this chapter relating to employees [shall] apply to interns.

b. For purposes of this chapter, a parent entity is deemed one of the employers of all persons employed

by a subsidiary entity of such parent entity, and a franchisor is deemed one of the employers of all persons employed by a franchisee of such franchisor, except that as used in this subdivision the terms “parent entity” and “franchisor” do not include the city or any agency thereof.

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

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