



Legislation Text

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Int. No. 1-A

By Council Members Chin, The Speaker (Council Member Mark-Viverito), Cohen, Constantinides, Cornegy, Crowley, Cumbo, Dromm, Eugene, Ferreras, Johnson, Kallos, King, Koo, Koslowitz, Lancman, Lander, Levin, Levine, Menchaca, Miller, Reynoso, Richards, Rodriguez, Rose, Rosenthal, Torres, Van Bramer, Barron, Espinal, Gibson, Palma, Dickens, Maisel, Mendez, Williams, Vacca, Cabrera and Garodnick (by request of the Mayor and the Manhattan Borough President)

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to the provision of sick time earned by employees, and section 7 of local law number 46 for the year 2013, relating to such sick time, in relation to the effective date of such local law, and to repeal section 6 of local law number 46 for the year 2013, relating to a determination of the Independent Budget Office.

Be it enacted by the Council as follows:

Section 1. Subdivision (e) of section 2203 of the New York city charter, as added by local law number 46 for the year 2013, is amended to read as follows:

(e) The commissioner shall have all powers as set forth in chapter 8 of title 20 of the administrative code relating to the receipt, investigation, and resolution of complaints thereunder regarding earned sick time, and the power to conduct investigations regarding violations of such chapter upon his or her own initiative.

§ 2. Section 2203 of the New York city charter is amended by adding a new subdivision (i) to read as follows:

(i) Notwithstanding any inconsistent provision of law, the mayor may designate an agency other than the department to enforce the provisions of chapter 8 of title 20 of the administrative code of the city of New York. Upon such designation, such agency shall be deemed to have all powers of the commissioner as set forth in this section in connection with the enforcement of such chapter.

§ 3. Section 20-771 of the administrative code of the city of New York, as added by local law number 33 for the year 2003, is amended to read as follows:

§ 20-771 Statement of employee rights and employer obligations under city, state and federal law. a. Every licensed employment agency under the jurisdiction of the commissioner and engaged in the job placement of domestic or household employees shall provide to each applicant for employment as a domestic or household employee and his or her prospective employer, before job placement is arranged, a written statement indicating the rights of such employee and the obligations of his or her employer under city, state and federal law. Such statement of rights and obligations shall embody provisions of city, state and federal laws that pertain to domestic or household employees, both in their capacity as workers in New York city, New York state and the United States and in their capacity specifically as domestic or household employees in New York city, New York state and the United States. Such statement of rights and obligations shall include, but not be limited to, a general description of employee rights and employer obligations pursuant to laws regarding minimum wage, overtime and hours of work, sick time, days of rest, record keeping, social security payments, unemployment insurance coverage, disability insurance coverage and workers' compensation. Such statement of rights and obligations shall be prepared and distributed by the commissioner to licensed employment agencies over which the commissioner has jurisdiction.

b. Every employment agency engaged in the job placement of domestic or household employees shall keep on file in its principal place of business for a period of three (3) years a statement, signed by the employer of a domestic or household employee whom the employment agency has placed with such employer, indicating that the employer has read and understands the statement of rights and obligations he or she received pursuant to subdivision (a) of this section.

§ 4. Subdivisions b and h of section 20-912 of the administrative code of the city of New York, as added by local law number 46 for the year 2013, are amended to read as follows:

b. "Chain business" shall mean any employer that is part of a group of establishments that share a common owner or principal who owns at least thirty 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 general business law section 681; provided that the total number of employees of all such establishments in such group is at least [~~fifteen~~] five.

h. "Family member" shall mean an employee's child, spouse, domestic partner [or], parent, sibling, grandchild or grandparent, or the child or parent of an employee's spouse or domestic partner.

§ 5. Section 20-912 of the administrative code of the city of New York is amended by adding four new subdivisions s, t, u, and v to read as follows:

s. "Department" shall mean the department of consumer affairs or such other agency as the mayor shall designate pursuant to section 20-925 of this chapter.

t. "Grandchild" shall mean a child of an employee's child.

u. "Grandparent" shall mean a parent of an employee's parent.

v. "Sibling" shall mean an employee's brother or sister, including half-siblings, step-siblings and siblings related through adoption.

§ 6. Subdivision a of section 20-913 of the administrative code of the city of New York, as amended by local law number 6 for the year 2014, is amended to read as follows:

a. All employees have the right to sick time pursuant to this chapter.

1. All employers that employ [~~fifteen~~] five or more employees [, except for any employer that is a business establishment classified in sector 31, 32 or 33 of the North American Industry Classification System,] and all employers of one or more domestic workers shall provide paid sick time to their employees in accordance with the provisions of this chapter [and the schedule set forth in section 7 of the local law which enacted this section].

2. All employees not entitled to paid sick time pursuant to this chapter shall be entitled to unpaid sick time in accordance with the provisions of this chapter [and the schedule set forth in section 7 of the local law which enacted this section].

[3. All employers that employ fifteen to nineteen employees, and all employers of one or more domestic

workers, shall provide unpaid sick time in accordance with the provisions of this chapter and the schedule set forth in section 7 of the local law which enacted this section during any period in which, pursuant to the schedule set forth in section 7 of the local law which enacted this section, such employers are not required to provide paid sick time but employers that employ twenty or more employees, except for any employer that is a business establishment classified in sector 31, 32 or 33 of the North American Industry Classification System, are required to provide paid sick time.]

§ 7. Subdivision c of section 20-919 of the administrative code of the city of New York, as added by local law number 46 for the year 2013, is amended to read as follows:

c. Any person or entity that willfully violates the notice requirements of this section shall be subject to a civil [fine] penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice pursuant to this section.

§ 8. Section 20-920 of the administrative code of the city of New York, as added by local law number 46 for the year 2013, is amended to read as follows:

§ 20-920 Employer records. Employers shall retain records documenting such employer's compliance with the requirements of this chapter for a period of [two] three years unless otherwise required pursuant to any other law, rule or regulation, and shall allow the department to access such records, with appropriate notice and at a mutually agreeable time of day, in furtherance of an investigation conducted pursuant to this chapter.

§ 9. Subdivisions b and c of section 20-924 of the administrative code of the city of New York, as added by local law number 46 for the year 2013, are amended to read as follows:

b. Any person alleging a violation of this chapter shall have the right to file a complaint with the department within [270 days] two years of the date the person knew or should have known of the alleged violation. The department shall maintain confidential the identity of any complainant unless disclosure of such complainant's identity is necessary for resolution of the investigation or otherwise required by law. The department shall, to the extent practicable, notify such complainant that the department will be disclosing his or

her identity prior to such disclosure.

c. Upon receiving a complaint alleging a violation of this chapter, the department shall investigate such complaint and attempt to resolve it through mediation. Within thirty days of written notification of a complaint by the department, the person or entity identified in the complaint shall provide the department with a written response and such other information as the department may request. The department shall keep complainants reasonably notified regarding the status of their complaint and any resultant investigation. If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the department believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation. The commissioner shall prescribe the form and wording of such notices of violation. The notice of violation shall be returnable to the administrative tribunal authorized to adjudicate violations of this chapter.

§ 10. Chapter 8 of title 20 of the administrative code of the city of New York is amended by adding a new section 20-925 to read as follows:

§ 20-925 Designation of agency. a. The mayor may designate an agency other than the department of consumer affairs to enforce the provisions of this chapter. Upon such designation, such agency shall be deemed to have all powers as set forth in this chapter relating to the receipt, investigation, and resolution of complaints thereunder regarding earned sick time, and the power to conduct investigations regarding violations of such chapter upon its own initiative. Such agency, in the performance of such functions, shall be authorized to hold public and private hearings, administer oaths, take testimony, serve subpoenas, receive evidence, render decisions and orders, and to receive, administer, pay over and distribute monies collected in and as a result of actions brought for violations of this chapter, and to promulgate, amend and modify rules and regulations necessary to enforce the provisions of this chapter.

b. Notwithstanding any inconsistent provision of law, such agency shall be authorized, upon due notice and hearing, to impose civil penalties for any violation of the provisions of this chapter, and to order equitable relief for and payment of monetary damages in connection with enforcement of this chapter. All proceedings

authorized pursuant to this section shall be conducted in accordance with rules promulgated by such agency.

c. Notwithstanding any inconsistent provision of law, powers conferred upon such agency by this section may be exercised by the office of administrative trials and hearings consistent with any orders of the mayor issued in accordance with subdivisions two and three of section one thousand forty-eight of the charter.

§ 11. Section 6 of local law number 46 for the year 2013 is REPEALED.

§ 12. Section 7 of local law number 46 for the year 2013 is amended to read as follows:

§ 7. This local law shall take effect [pursuant to the following schedule:

(1) If the December 16, 2013 Independent Budget Office ("IBO") determination shows that the most recent New York City Coincident Economic Index or similar successor index as published by the Federal Reserve Bank of New York (the "Index") is at or above its January 2012 level, then:

(a) All employers that employ twenty or more employees must comply with the provisions of this local law on April 1, 2014;

(b) all employers that employ fifteen to nineteen employees or a domestic worker must comply with the provisions of this local regarding paid sick time on October 1, 2015; and

(c) all employers with employees not entitled to paid sick time pursuant to chapter 8 of title 20 of the administrative code as added by section 3 of this local law, including those employers covered by paragraph 3 of subdivision a of section 20-913 of such code as added by section 3 of this local law during the period specified therein, must comply with the provisions of this local law on April 1, 2014.

(2) If on December 16, 2013, the Index is not at or above its January 2012 level, but on June 16, 2014, the Index is at or above its January 2012 level as determined by the IBO, then:

(a) All employers that employ twenty or more employees must comply with the provisions of this local law on October 1, 2014;

(b) all employers that employ fifteen to nineteen employees or a domestic worker must comply with the provisions of this local regarding paid sick time on April 1, 2016; and

(c) all employers with employees not entitled to paid sick time pursuant to chapter 8 of title 20 of the administrative code as added by section 3 of this local law, including those employers covered by paragraph 3 of subdivision a of section 20-913 of such code as added by section 3 of this local law during the period specified therein, must comply with the provisions of this local law on October 1, 2014.

(3) If on June 16, 2014, the Index is not at or above its January 2012 level, but on December 16, 2014, the Index is at or above its January 2012 level as determined by the IBO, then:

(a) All employers that employ twenty or more employees must comply with the provisions of this local law on April 1, 2015;

(b) all employers that employ fifteen to nineteen employees or a domestic worker must comply with the provisions of this local law regarding paid sick time on October 1, 2016; and

(c) all employers with employees not entitled to paid sick time pursuant to chapter 8 of title 20 of the administrative code as added by section 3 of this local law, including those employers covered by paragraph 3 of subdivision a of section 20-913 of such code as added by section 3 of this local law during the period specified therein, must comply with the provisions of this local law on April 1, 2015.

(4) If on December 16, 2014 the Index is not at or above its January 2012 level, then the IBO shall make a determination every June 16th and December 16th of each year thereafter until such Index is at or above its January 2012 level, and the effective date of this local law for all employers shall be on the succeeding October 1 or April 1, respectively, after the first such determination that the Index is at or above its January 2012 level.

(5) Notwithstanding the preceding paragraphs (1) through (4), on April 1, 2014, provided that in the case of employees covered by a valid collective bargaining agreement in effect on [the effective date prescribed by such preceding paragraphs] such date, this local law shall take effect on the date of the termination of such agreement.

[(6) This local law shall take effect pursuant to the preceding paragraphs, and the commissioner of

consumer affairs shall take such measures as are necessary for its implementation, including the promulgation of rules, prior to such effective date.]

§ 13. Notwithstanding any other provision of law, an employer with fewer than twenty employees or an employer that is a business establishment classified in sector 31, 32 or 33 of the North American Industry Classification System shall not be subject to a civil penalty for any violation of chapter 8 of title 20 of the administrative code of the city of New York or any rule promulgated thereunder, if such violation occurs before October 1, 2014; provided, however, that the department may order any other remedy authorized pursuant to such chapter, including equitable relief, for such a violation. A first time violation of any provision of chapter 8 of title 20 of the administrative code of the city of New York, or any rule promulgated thereunder, by an employer with fewer than twenty employees or an employer that is a business establishment classified in sector 31, 32 or 33 of the North American Industry Classification System, that occurs before October 1, 2014, shall not serve as a predicate for the purposes of imposing penalties for subsequent violations occurring on or after October 1, 2014 pursuant to section 20-924 of the administrative code of the city of New York, but any second or subsequent violation of the same provision by such an employer that occurs before October 1, 2014, shall serve as a predicate for the purposes of imposing penalties for subsequent violations that occur on or after October 1, 2014.

§ 14. This local law shall take effect on April 1, 2014, provided that in the case of employees covered by a valid collective bargaining agreement in effect on such date, this local law shall take effect on the date of the termination of such agreement, and provided further that prior to April 1, 2014:

(1) the mayor may exercise the authority granted by subdivision a of section 20-925 of the administrative code of the city of New York, as added by section ten of this local law, to designate an agency other than the department of consumer affairs to enforce the provisions of chapter 8 of title 20 of the administrative code of the city of New York; and

(2) the department, as defined in subdivision s of section 20-912 of the administrative code of the city of

New York, as added by section five of this local law, shall take such measures as are necessary for the implementation of chapter 8 of title 20 of the administrative code of the city of New York, as added by local law 46 for the year 2013, and as amended by local law number 6 for the year 2014, and as further amended by this local law, including the promulgation of rules.

MWC
2/18/14 9:51 p.m.