



Legislation Text

File #: Int 1399-2016, Version: A

Int. No. 1399-A

By Council Members Rose, Lander, Dromm, Cumbo, Kallos, Constantinides, Levin, Cohen, Reynoso, Levine, Rosenthal, Johnson, Salamanca, Van Bramer, Torres, Lancman, Menchaca, Chin, Cabrera, Espinal, Eugene, Maisel, Williams, Barron, Miller, Ferreras-Copeland, Treyger, Richards, King, Perkins, Rodriguez and the Public Advocate (Ms. James)

A Local Law to amend the administrative code of the city of New York, in relation to protecting employees who seek temporary changes to work schedules for personal events and certain other schedule changes

Be it enacted by the Council as follows:

Section 1. Chapter 12 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 6 to read as follows:

Subchapter 6

Temporary Changes to Work Schedules for Personal Events and Protections from Retaliation for Making
Schedule Change Requests

§ 20-1261 Definitions. a. For purposes of this subchapter, the following terms have the following meanings:

Business day. The term “business day” means any 24-hour period when an employer requires employees to work at any time.

Caregiver. The term “caregiver” means a person who provides direct and ongoing care for a minor child or a care recipient.

Care recipient. The term “care recipient” means a person with a disability who (i) is a family member or a person who resides in the caregiver’s household and (ii) relies on the caregiver for medical care or to meet the needs of daily living.

Minor child. The term “minor child” means a child under the age of 18.

Personal event. The term “personal event” means (i) the need for a caregiver to provide care to a minor child or care recipient; (ii) an employee’s need to attend a legal proceeding or hearing for subsistence benefits to which the employee, a family member or the employee’s care recipient is a party; or (iii) any circumstance that would constitute a basis for permissible use of safe time or sick time as set forth in section 20-914.

b. For purposes of this subchapter, the following terms have the same meanings as those set forth in section 20-912: calendar year, child, family member and paid safe/sick time.

§ 20-1262 Required temporary changes and other requests for changes to a work schedule. a. An employer shall grant an employee’s request for a temporary change to the employee’s work schedule relating to a personal event in accordance with the following provisions, with a temporary change meaning a limited alteration in the hours or times that or locations where an employee is expected to work, including, but not limited to, using paid time off, working remotely, swapping or shifting work hours and using short-term unpaid leave:

1. On request, the employer must grant a request for a temporary change to the employee’s work schedule under this section two times in a calendar year for up to one business day per request. The employer may permit the employee to use two business days for one request, in which case the employer need not grant a second request.

2. An employee who requests such a change:

(a) Shall notify such employee’s employer or direct supervisor as soon as the employee becomes aware of the need for a temporary change to the work schedule and shall inform the employer or supervisor that the change is due to a personal event;

(b) Shall make a proposal for the temporary change to the work schedule, unless the employee seeks leave without pay; and

(c) Need not put the initial request in writing, but as soon as is practicable, and no later than the second

business day after the employee returns to work following the conclusion of the temporary change to the work schedule, the employee must submit the request in writing, indicating the date for which the change was requested and that it was due to the employee's personal event. The employer may require that such request be submitted in electronic form if employees of the employer commonly use such electronic form to request and manage leave and schedule changes. If the employee fails to submit the written request, the employer's obligation to respond in writing pursuant to paragraph 3 of this subdivision is waived.

3. An employer who receives such an initial request shall respond immediately, but need not put such initial response in writing. As soon as is practicable, and no later than 14 days after the employee submits the request in writing, the employer shall provide a written response, which may be in electronic form if such form is easily accessible to the employee. An employer's written response shall include:

(a) Whether the employer will agree to the temporary change to the work schedule in the manner requested by the employee, or will provide the temporary change to the work schedule as leave without pay, which does not constitute a denial;

(b) If the employer denies the request for a temporary change to the work schedule, an explanation for the denial; and

(c) How many requests and how many business days pursuant to this subchapter the employee has left in the calendar year after taking into account the employer's decision contained in the written response.

4. An employer may deny a request for a temporary change to the employee's work schedule relating to a personal event only if the employee has already exhausted the two allotted requests in the calendar year pursuant to paragraph 1 of subdivision a of this section or if an exemption set forth in section 20-1263 applies.

b. An employee may request, and in so doing is protected by the provisions of subchapter 1 of this chapter, and an employer may grant or deny, a change to a work schedule other than the temporary changes an employer is required to grant under subdivision a of this section. An employee request for such other change to a work schedule and an employer response to such a request shall follow the procedure in paragraphs 2 and 3 of

subdivision a of this section to the extent applicable and as set forth in rules promulgated by the director.

c. 1. An employee need not use leave accrued under chapter 8 of this title before requesting schedule changes under this subchapter.

2. Unpaid leave granted for a personal event pursuant to this subchapter does not count toward an employer's obligation to grant leave under chapter 8 of this title.

3. Leave granted under chapter 8 of this title does not count toward an employer's obligation to grant leave under this section.

4. Nothing in this subchapter affects an employer's obligation to provide a reasonable accommodation in the form of a change to a work schedule required pursuant to other laws or regulations or to otherwise comply with the requirements of other laws or regulations, including, but not limited to, those requirements contained in title 8.

§ 20-1263 Exemptions. This subchapter does not:

a. Apply to any employee who:

1. Is covered by a valid collective bargaining agreement if such agreement waives the provisions of this subchapter and addresses temporary changes to work schedules;

2. Has been employed by the employer for fewer than 120 days;

3. Is employed by any employer whose primary business for which that employee works is the development, creation or distribution of theatrical motion pictures, televised motion pictures, television programs or live entertainment presentations, except for an employee whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers and except for an employee whose primary duty is performing routine mental, manual, mechanical or physical work in connection with the care or maintenance of an existing building or location used by the employer; or

4. Works fewer than 80 hours in the city in a calendar year.

b. Preempt, limit or otherwise affect the applicability of any provisions of any other law, regulation, requirement, policy or standard, other than a collective bargaining agreement, that provides comparable or superior benefits for employees to those required herein.

§ 2. Subdivision a of Section 20-1208 of the administrative code of the city of New York, as added by local law number 107 for the year 2017, is amended to read as follows:

a. For violations of this chapter, the office may grant the following relief to employees or former employees:

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

2. An order directing compliance with the notice and posting of rights and recordkeeping requirements set forth in sections 20-1205 and 20-1206; and

3. For each violation of:

(a) Section 20-1204,

(1) Rescission of any discipline issued, reinstatement of any employee terminated and payment of back pay for any loss of pay or benefits resulting from discipline or other action taken in violation of section 20-1204;

(2) \$500 for each violation not involving termination; and

(3) \$2,500 for each violation involving termination;

(b) Section 20-1221, \$200 and an order directing compliance with section 20-1221;

(c) Section 20-1222, payment of schedule change premiums withheld in violation of section 20-1222 and \$300;

(d) Section 20-1231, payment as required under section 20-1231, \$500 and an order directing compliance with section 20-1231;

(e) Section 20-1241, \$300 and an order directing compliance with section 20-1241;

(f) Subdivision a of section 20-1251, the greater of \$500 or such employee's actual damages; [and]

(g) Subdivisions a and b of section 20-1252, \$300[.]; and

(h) Subdivision a or b of section 20-1262, \$500 and an order directing compliance with such subdivision, provided, however, that an employer who fails to provide an employee with the written response required by subdivision a of section 20-1262 may cure the violation without a penalty being imposed by presenting proof to the satisfaction of the office that it provided the employee with the required written response within seven days of the office notifying the employer of the opportunity to cure.

§ 3. This local law takes effect 180 days after it becomes law, provided that in the case of employees covered by a valid collective bargaining agreement in effect on such date, this local law takes effect on the date of the termination of such agreement, and provided further that the director of the office of labor standards may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such effective date.

MC/ADW

LS #4041-2013, 532, 2012, 2785, 4236
12/11/17 4:42 pm