



Legislation Text

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A Local Law to repeal section 22-505 of the administrative code of the city of New York, relating to displaced building service workers and to re-enact such section

Be it enacted by the Council as follows:

Section 1. Section 22-505 of the administrative code of the city of New York is REPEALED and re-enacted to read as follows:

§ 22-505 Displaced Building Service Workers. a. For purposes of this section, the following terms have the following meanings:

Building service. The term “building service” means work performed in connection with the care or maintenance of an existing building and includes, but is not limited to, work performed by a watchman, guard, security officer, fire safety director, doorman, building cleaner, porter, handyman, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, window cleaner, and superintendent.

Building service contract. The term “building service contract” means a contract for the furnishing of building services, and includes any subcontracts for such services.

Building service employee. The term “building service employee” means any person employed to perform a building service who has been regularly assigned to a building on a full or part-time basis for at least ninety days immediately preceding any transition in employment subject to this section except for (i) persons who are managerial, supervisory, or confidential employees, provided that this exemption shall not

apply to building superintendents or resident managers; (ii) persons earning in excess of thirty-five dollars per hour from a covered employer, provided that this amount shall be adjusted on January 1, 2017 and annually thereafter by the mayor's office of labor standards based upon the preceding twelve-month percentage increase, if any, in the consumer price index for all urban consumers for all items, as published by the bureau of labor statistics of the United States department of labor; and (iii) persons regularly scheduled to work fewer than eight hours per week at a building.

City of New York. The term "city of New York" means any city, county or borough, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government the expenses of which are paid in whole or in part from the city treasury.

Covered employer. The term "covered employer" means any person who hires or retains building service employees or a building service contractor, including, but not limited to, a lessee of commercial space, housing cooperative, condominium association, building managing agent, or any other person who owns, leases or manages real property, either on its own behalf or for another person, within the city of New York, provided, however, that the requirements of this section shall not apply (i) to residential buildings of less than 50 units, (ii) to commercial office, institutional or retail buildings of less than 100,000 square feet, (iii) to any lessee of commercial office space whose leasehold is less than 35,000 square feet, or (iv) to the extent that such requirements conflict with section 162 of the state finance law.

Former building service contractor. The term "former building service contractor" means any person who furnishes building services pursuant to a building service contract prior to a termination of such contract.

Person. The term "person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ persons or enter into service contracts, but does not include the city of New York, the state of New York, and the federal government or any other governmental entity, or any individual or entity managing real property for a governmental entity.

Successor building service contractor. The term “successor building service contractor” means any person who, pursuant to a contract, furnishes building services that are substantially similar to those that were provided under a terminated building service contract or to those that were provided by building service employees previously employed by a covered employer.

b. Terminated Building Service Contract.

1. No less than 15 calendar days before terminating any building service contract or, in the situation where such contract covers multiple buildings, terminating such contract as to one or more buildings, any covered employer shall request the former building service contractor to provide, any covered employer or the successor building service contractor, whichever person intends to furnish substantially similar building services to those that were provided under the terminated building service contract, a full and accurate list containing the name, address, date of hire and employment classification of each building service employee employed at the buildings covered by the terminated contract. The former building service contractor shall provide such list within 72 hours of receipt of the request from the covered employer. At the same time that the former building service contractor provides such list, the former building service contractor shall post the list in a notice to the building service employees that also sets forth the rights provided by this section, in the same location and manner that other statutorily required notices to employees are posted at the affected building. Such notice shall also be provided to the employees’ collective bargaining representative, if any.

2. Upon termination of a building service contract, any covered employer or the successor building service contractor, whichever person intends to furnish substantially similar building services to those that were provided under the terminated building service contract, shall retain those building service employees employed at the buildings covered by the terminated contract for a 90-day transition employment period.

3. If at any time the covered employer or successor building service contractor, whichever person intends to furnish substantially similar building services to those that were provided under the terminated building service contract, determines that fewer building service employees are required to perform

building services at the affected buildings than had been performing such services by the former building service contractor, the covered employer or the successor building service contractor shall retain the building service employees by seniority within job classification; provided, that during the 90-day transition period, the covered employer or successor building service contractor shall maintain a preferential hiring list of those building service employees not retained at the buildings who shall be given a right of first refusal to any jobs within their classifications that become available during that period.

4. Except as provided in paragraph 3 of this subdivision, during the 90-day transition period, the covered employer or successor building service contractor, whichever person intends to furnish substantially similar building services to those that were provided under the terminated building service contract, shall not discharge without cause a building service employee retained pursuant to this section.

5. At the end of the 90-day transition period, the covered employer or successor building service contractor, whichever person intends to furnish substantially similar building services to those that were provided under the terminated building service contract, shall perform a written performance evaluation for each building service employee retained pursuant to this section. If such employee's performance during such 90-day transition period is satisfactory, the covered employer or successor building service contractor shall offer such employee continued employment under the terms and conditions established by the covered employer or successor building service contractor.

6. For purposes of this subdivision, "covered employer" includes any person to which a controlling interest in the affected building has been or is being transferred.

c. Transfer of Controlling Interest.

1. No less than 15 calendar days before transferring a controlling interest in any building in which building services employees are employed, the covered employer who is transferring the controlling interest in such building shall provide to the covered employer to which the controlling interest is being transferred a full and accurate list containing the name, address, date of hire and employment classification of

each building service employee employed at the buildings covered by the transfer of such controlling interest. At the same time, the covered employer who is transferring the controlling interest in such building shall post such list in a notice to its building service employees that also sets forth the rights provided by this section, in the same location and manner that other statutorily required notices to employees are posted at the affected building. Such notice shall also be provided to the employees' collective bargaining representative, if any.

2. The covered employer to which the controlling interest is being transferred shall retain those building service employees employed at the buildings covered by the transfer of the controlling interest for a 90-day transition employment period.

3. If at any time the covered employer to which the controlling interest is being transferred determines that fewer building service employees are required to perform building services at the affected buildings than had been performing such services for the covered employer who is transferring the controlling interest, the covered employer to which the controlling interest is being transferred shall retain the building service employees by seniority within job classification; provided, that during the 90-day transition period, such covered employer maintain a preferential hiring list of those building service employees not retained at the buildings who shall be given a right of first refusal to any jobs within their classifications that become available during that period.

4. Except as provided in paragraph 3 of this subdivision, during the 90-day transition period, the covered employer to which the controlling interest is being transferred shall not discharge without cause a building service employee retained pursuant to this section.

5. At the end of the 90-day transition period, the covered employer to which the controlling interest is being transferred shall perform a written performance evaluation for each employee retained pursuant to this section. If such employee's performance during such 90-day transition period is satisfactory, the covered employer to which the controlling interest is being transferred shall offer such employee continued employment under the terms and conditions established by the covered employer.

d. Entering into a Building Service Contract.

1. No less than 15 calendar days before entering into a building service contract, the covered employer that will enter into such contract shall provide to the successor building service contractor a full and accurate list containing the name, address, date of hire, and employment classification of each building service employee who is currently performing those services. At the same time the covered employer that will enter into such contract provides such list, such employer shall post a notice to the building service employees that also sets forth the rights provided by this section in the same location and manner that other statutorily required notices to employees are posted at the affected building. Such notice shall also be provided to the employees' collective bargaining representative, if any.

2. The successor building service contractor shall retain those building service employees who were providing those services for a covered employer for a 90-day transition employment period.

3. If at any time the successor building service contractor determines that fewer building service employees are required to perform building services at the affected building than had been performing such services for the covered employer, the successor building service contractor shall retain the building service employees by seniority within job classification; provided, that during the 90-day transition period, the successor building service contractor shall maintain a preferential hiring list of those building service employees not retained at the buildings who shall be given a right of first refusal to any jobs within their classifications that become available during that period.

4. Except as provided in paragraph 3 of this subdivision, during the 90-day transition period, the successor building service contractor shall not discharge without cause an employee retained pursuant to this section.

5. At the end of the 90-day transition period, the successor building service contractor shall perform a written performance evaluation for each building service employee retained pursuant to this section. If such employee's performance during such 90-day transition period is satisfactory, the successor building

service contractor shall offer such employee continued employment under the terms and conditions established by such contractor.

e. Remedies

1. A building service employee who has been discharged or not retained in violation of this section may bring an action in supreme court against a former building service contractor, covered employer or successor building service contractor for violation of any obligation imposed pursuant to this section.

2. The court shall have authority to order preliminary and permanent equitable relief, including, but not limited to, reinstatement of any employee who has been discharged or not retained in violation of this section.

3. If the court finds that by reason of a violation of any obligation imposed pursuant to subdivision b, c, or d of this section a building service employee has been discharged or not retained in violation of this section, it shall award:

(a) Back pay, and an equal amount as liquidated damages, for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of (1) the average regular rate of pay received by the employee during the last three years of the employee's employment in the same occupation classification; or (2) the final regular rate received by the employee. Back pay shall apply to the period commencing with the date of the discharge or refusal-to-retain by the covered employer or successor building service contractor through the effective date of any offer of reinstatement or reinstatement of the employee.

(b) Costs of benefits the covered employer or successor building service contractor would have incurred for the employee under such employee's benefit plan.

(c) The building service employee's reasonable attorney's fees and costs.

4. In any such action, the court shall have authority to order the covered employer or the former building service contractor, as applicable, to provide any information required pursuant to subdivision b, c or d

of this section.

f. The provisions of this section shall not apply to the following:

1. any covered employer or successor building service contractor that, on or before the effective date of a termination of a building service contract, agrees to assume, or to be bound by, the collective bargaining agreement of the former building service contractor, provided that the collective bargaining agreement provides terms and conditions for the discharge or laying off of employees;

2. any covered employer to which a controlling interest in a building is being transferred that, on or before the effective date of the transfer of such controlling interest, agrees to assume, or to be bound by, the collective bargaining agreement of the covered employer that is transferring the controlling interest, provided that the collective bargaining agreement provides terms and conditions for the discharge or laying off of employees;

3. any successor building service contractor that, on or before the effective date of the entering into a building service contract by a covered employer, agrees to assume or to be bound by, the collective bargaining agreement of the covered employer, provided that the collective bargaining agreement provides terms and conditions for the discharge or laying off of employees;

4. if there was no existing collective bargaining agreement as described in paragraphs 1, 2, or 3 of this subdivision, any covered employer or successor building service contractor that agrees, on or before the effective date of the termination of the contract, transfer of a controlling interest, or entering into a building service contract, to enter into a new collective bargaining agreement covering its building service employees, provided that the collective bargaining agreement provides terms and conditions for the discharge or laying off of employees;

5. any covered employer or successor building service contractor whose building service employees will be accreted to a bargaining unit with a pre-existing collective bargaining agreement, provided that the collective bargaining agreement provides terms and conditions for the discharge or laying off of

employees; or

6. any covered employer or former building service contractor that obtains a written commitment from a covered employer or successor building service contractor that the covered employer or successor building service contractor's building service employees will be covered by a collective bargaining agreement falling within paragraphs (1) through (5) of this subdivision.

§ 2. This local law shall take effect immediately.

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