



Legislation Details (With Text)

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Title: A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to retaliatory personnel actions by employers and wage transparency.

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Indexes:

Attachments: 1. Summary of Int. No. 197, 2. Committee Report 4/20/15, 3. Hearing Testimony 4/20/15, 4. Hearing Transcript 4/20/15

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Int. No. 197

By Council Members Johnson, Chin, Levine, Mendez, Rosenthal, Koslowitz, Rodriguez, Levin, Rose, Williams, Gibson, Cohen, Van Bramer, Lancman, Richards, Cornegy, Espinal, Maisel, Dromm, Vallone, Miller, Reynoso, Kallos, Gentile, Ferreras-Copeland, Lander, Garodnick, Torres, Palma, Vacca, Menchaca, Constantinides, Cumbo, Treyger, Crowley and Barron

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to retaliatory personnel actions by employers and wage transparency.

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 hereby amended to read as follows:

(e) The commissioner shall have all powers as set forth in [chapter] chapters 8 and 9 of title 20 of the administrative code relating to the receipt, investigation, and resolution of complaints thereunder regarding earned sick time and wage transparency and the power to conduct investigations regarding violations of such chapter upon his or her own initiative.

§ 2. Paragraph (1) of subdivision (h) of section 2203 of the New York city charter, as relettered by local law number 46 for the year 2013, is hereby amended to read as follows:

(h)(1) Notwithstanding any inconsistent provision of law, the department shall be authorized, upon due notice and hearing, to impose civil penalties for the violation of any laws or rules the enforcement of which is within the jurisdiction of the department pursuant to this charter, the administrative code or any other general, special or local law. The department shall have the power to render decisions and orders and to impose civil penalties for all such violations, and to order equitable relief for and payment of monetary damages in connection with enforcement of [chapter] chapters 8 and 9 of title 20 of the administrative code. Except to the extent that dollar limits are otherwise specifically provided, such civil penalties shall not exceed five hundred dollars for each violation. All proceedings authorized pursuant to this subdivision shall be conducted in accordance with rules promulgated by the commissioner. The remedies and penalties provided for in this subdivision shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

§ 3. Title 20 of the administrative code of the city of New York is amended by adding a new chapter 9 to read as follows:

CHAPTER 9

Wage Transparency

§ 20-930 Definitions. When used in this chapter, the following terms shall be defined as

a. “Employee” shall mean any “employee” as defined in section 190(2) of the labor law who is

employed for hire within the city of New York for more than eighty hours in a calendar year who performs work on a full-time or part-time basis, including work performed in a transitional jobs program pursuant to section 336-f of the social services law, but not including work performed as a participant in a work experience program pursuant to section 336-c of the social services law, and not including those who are employed by (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city of New York or any local government, municipality or county or any entity governed by general municipal law section 92 or county law section 207.

b. “Employer” shall mean any “employer” as defined in section 190(3) of the labor law, but not including (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city of New York or any local government, municipality or county or any entity governed by general municipal law section 92 or county law section 207.

c. “Retaliation” shall mean any threat, discipline, discharge, demotion, suspension, reduction in employee hours, or any other adverse employment action against any employee for exercising or attempting to exercise any right guaranteed under this chapter.

§ 20-931 **Right to wage transparency.** a. It shall be an unlawful employment practice to discharge, demote, retaliate, interfere, intimidate, threaten or discriminate against any employee because the employee inquired about, disclosed, compared or otherwise discussed the employee’s wages or employee benefits, or the wages or employee benefits of any other employee, or aided or encouraged any other employee to exercise his or her rights under this chapter, provided that any such wage or benefit information was obtained in a lawful manner.

b. It shall be an unlawful employment practice to require an employee or prospective employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her

wages, salary, or paid benefits.

c. Nothing in this chapter shall require an employer to disclose confidential wage and employee benefit information to anyone other than the employee to whom it pertains.

§ 20-932 **Retaliation and interference prohibited.** No employer shall engage in retaliation or threaten retaliation against an employee for exercising or attempting to exercise any right provided pursuant to this chapter, or interfere with any investigation, proceeding or hearing pursuant to this chapter. The protections of this chapter shall apply to any person who mistakenly but in good faith alleges a violation of this chapter. Rights under section 20-931 of this chapter shall include, but not be limited to, the right to file a complaint for alleged violations of this chapter with the department, communicate with any person about any violation of this chapter, participate in any administrative or judicial action regarding an alleged violation of this chapter, or inform any person of his or her potential rights under this chapter.

§ 20-933 **Notice of rights.** a. An employer shall provide any new employee at the commencement of employment or any existing employee within thirty days of the effective date of this local law, with written notice of such employee's right to wage transparency pursuant to this chapter, including the right to be free from retaliation and to bring a complaint to the department. Such notice shall be in English and the primary language spoken by that employee, provided that the department has made available a translation of such notice in such language pursuant to subdivision b of this section. Instead of providing each employee with such notice, an employer may instead conspicuously post such notice at such employer's place of business in an area accessible to employees.

b. The department shall create and make available notices that contain the information required pursuant to subdivision a of this section. Such notices shall be posted in a downloadable format on the department's website in Chinese, English, French-Creole, Italian, Korean, Russian, Spanish and any other language deemed appropriate by the department.

§ 20-934 **Enforcement and penalties.** a. The department shall enforce the provisions of this chapter

and investigate complaints received by the department in a timely manner.

b. Any person alleging a violation of this chapter shall have the right to file a complaint with the department within 180 days 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. The department shall keep complainants reasonably notified regarding the status of their complaint and any resultant investigation. If 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.

d. The department shall have the power to impose penalties provided for in this chapter and to grant an employee or former employee all appropriate relief. Any entity or person found to be in violation of the provisions of this chapter shall be liable for a civil penalty payable to the city not to exceed five hundred dollars for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed seven hundred and fifty dollars for the second violation and not to exceed one thousand dollars for each succeeding violation.

§ 4. This local law shall take effect 180 days after it is enacted 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.